

# City of Las Cruces<sup>®</sup>

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 11 Ordinance/Resolution# 10-132 Council District:       

For Meeting of November 2, 2009  
(Adoption Date)

**TITLE:**

A RESOLUTION RESCINDING RESOLUTION 08-199 AND AMENDING PARAGRAPH 15 OF THE 2006 AGREEMENT FOR CONSTRUCTION OF RINCONADA BOULEVARD FROM NORTHRISE TO SONOMA RANCH BOULEVARD; PORTIONS OF SONOMA RANCH BOULEVARD BETWEEN U.S. HIGHWAY 70 AND LOHMAN AVENUE; THE SOUTH FORK ARROYO CROSSING AT SONOMA RANCH BOULEVARD INCLUDING ASSOCIATED ARROYO IMPROVEMENTS; AND LOHMAN AVENUE FROM ITS CURRENT TERMINUS TO SONOMA RANCH BOULEVARD AS REQUESTED BY ALAMEDA.

**PURPOSE(S) OF ACTION:** To amend paragraph 15 of the 2006 Agreement and reinstate the original terms for repayment of the Northrise bond issue obligation.

<b>Name of Drafter:</b> Gloria Podruchny		<b>Department:</b> Finance		<b>Phone:</b> 541-2050	
<b>Department</b>	<b>Signature</b>	<b>Phone</b>	<b>Department</b>	<b>Signature</b>	<b>Phone</b>
Originating Department		541-2050	Budget		2300
			Assistant City Manager		2271
Legal			City Manager		2076

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

Alameda Land Investment Corporation ("Alameda") has two separate roadway funding agreements. The first agreement ("the 2000 Agreement") was approved by City Council in September 2000, and the second agreement ("the 2006 Agreement") was approved in November 2006. Both agreements created Voluntary Special Assessment Districts which obligate Alameda to repay the City for certain roadway and related utility improvements. Alameda has requested a revision to payment terms currently in effect for the 2000 loan agreement (October 16, 2009 communication).

The 2000 Agreement, approved via Resolution 01-056, included provisions for payback in paragraphs 10 -15. As part of the 2006 Agreement (Res. 07-159), Alameda voluntarily offered to pay off the remainder due on the 2000 Agreement. In 2008, that early pay condition of the 2006 Agreement was modified to relax the payment terms by amending paragraph 15 via Resolution No. 08-199. The amendment basically extended payment terms to coincide with City debt service payments on the 2000 borrowing.

Now, Alameda wishes to return to the payment schedule originally agreed to in the 2000 Agreement. Therefore, Alameda desires to modify paragraph 15 of the 2006 Agreement to read as follows:

15. Alameda will pay any outstanding balances owed to the City by Alameda Land and Development Corporation for the Northrise assessment as originally provided for in City Council Resolution No. 01-056, which the parties agree is no later than September 15, 2015.

**SUPPORT INFORMATION:**

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Resolution.
2. Resolution No. 08-199 with paragraph 15 amendment.
3. Resolution No. 07-159 with 2006 Agreement attached.
4. Resolution No. 01-056 with 2000 Agreement attached.
5. October 16, 2009 communication from Jack Pickel, ALIC.

**OPTIONS / ALTERNATIVES:**

1. Approve the Resolution as drafted thereby rescinding Resolution 08-199 and amending paragraph 15 of the 2006 Agreement.
2. Modify the proposed amendment to paragraph 15.
3. Do not approve the Resolution thereby not amending paragraph 15 of the 2006 Agreement as requested by Alameda

RESOLUTION NO. 10-132

**A RESOLUTION RESCINDING RESOLUTION 08-199 AND AMENDING PARAGRAPH 15 OF THE 2006 AGREEMENT FOR CONSTRUCTION OF RINCONADA BOULEVARD FROM NORTHRISE TO SONOMA RANCH BOULEVARD; PORTIONS OF SONOMA RANCH BOULEVARD BETWEEN U.S. HIGHWAY 70 AND LOHMAN AVENUE; THE SOUTH FORK ARROYO CROSSING AT SONOMA RANCH BOULEVARD INCLUDING ASSOCIATED ARROYO IMPROVEMENTS; AND LOHMAN AVENUE FROM ITS CURRENT TERMINUS TO SONOMA RANCH BOULEVARD AS REQUESTED BY ALAMEDA.**

The City Council of the City of Las Cruces is informed that:

**WHEREAS**, Alameda Land Investment Corporation (“Alameda”) has two separate roadway funding agreements; and

**WHEREAS**, the first agreement (“the 2000 Agreement”) was approved by City Council in September 2000, and the second agreement (“the 2006 Agreement”) was approved in November 2006; and

**WHEREAS**, both agreements created Voluntary Special Assessment Districts which obligate Alameda to repay the City for certain roadway and related utility improvements; and

**WHEREAS**, Alameda has requested a revision to payment terms currently in effect for the 2000 loan agreement; and

**WHEREAS**, as part of the 2006 Agreement, Alameda voluntarily offered to pay off remainder due on the 2000 Agreement; and

**WHEREAS**, in 2008, the early pay condition of the 2006 Agreement was modified to relax the payment terms by amending paragraph 15 via Resolution No. 08-199; and

**WHEREAS**, Alameda wishes to return to the payment schedule originally agreed to in the 2000 Agreement and desires to modify paragraph 15 of the 2006 Agreement.

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

**(I)**

**THAT,** Resolution 08-199 is hereby rescinded.

**(II)**

**THAT,** Paragraph 15 of the 2006 Agreement is hereby modified to read as follows:

15. Alameda will pay any outstanding balances owed to the City by Alameda Land and Development Corporation for the Northrise assessment as originally provided for in City Council Resolution No. 01-056, which the parties agree is no later than September 15, 2015.

**(III)**

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

DONE AND APPROVED this \_\_\_\_\_ of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Mayor

ATTEST:

VOTE:

\_\_\_\_\_  
City Clerk

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Archuleta:	_____
Councillor Small:	_____
Councillor Jones:	_____
Councillor Thomas:	_____

(SEAL)

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

Approved as to Form:

*[Handwritten Signature]*  
 \_\_\_\_\_  
 AST City Attorney

**RESOLUTION NO. 08- 199**

**A RESOLUTION AMENDING PARAGRAPH 15 OF THE 2006 AGREEMENT FOR CONSTRUCTION OF RINCONADA BOULEVARD FROM NORTHRISE TO SONOMA RANCH BOULEVARD; PORTIONS OF SONOMA RANCH BOULEVARD BETWEEN U.S. HIGHWAY 70 AND LOHMAN AVENUE; THE SOUTH FORK ARROYO CROSSING AT SONOMA RANCH BOULEVARD INCLUDING ASSOCIATED ARROYO IMPROVEMENTS; AND LOHMAN AVENUE FROM ITS CURRENT TERMINUS TO SONOMA RANCH BOULEVARD AS REQUESTED BY ALAMEDA.**

The City Council of the City of Las Cruces is informed that:

**WHEREAS**, Alameda Land Investment Corporation ("Alameda") has two (2) separate roadway funding agreements with the City. Both agreements create a Voluntary Special Assessment District which obligates Alameda to repay the City for certain roadway and related utility improvements ("Project") paid for by the City when lands owned by Alameda that benefit from the Project are developed or are sold. Alameda's obligations to repay the City are secured by Municipal Liens on the benefiting lands; and

**WHEREAS**, the first agreement ("the 2000 Agreement") was approved in City Council Resolution No. 01-056 on September 5, 2000, and provided for the City constructing Northrise Drive and portions of Rinconada and Sonoma Ranch Boulevard to Highway 70 within the boundaries of land owned by Alameda ("the 2000 Project"). The 2000 Agreement obligated Alameda to repay the 2000 Project debt to the City when benefiting properties owned by it developed or were sold. Any unpaid balance of principal and interest was due within 15 years, or on or about October 1, 2015; and

**WHEREAS**, the second agreement ("the 2006 Agreement") was approved in City Council Resolution 07-159 on November 6, 2006 and provided for the City to construct Rinconada Boulevard from Northrise to Sonoma Ranch Boulevard, portions of Sonoma Ranch Boulevard between U. S. Highway 70 and Lohman Avenue, the South Fork Arroyo crossing at Sonoma Ranch Boulevard including associated arroyo improvements, and Lohman Avenue from its current terminus to Sonoma Ranch Boulevard, all within the boundaries of additional land owned by Alameda ("the 2006 Project"). The 2006 Agreement obligated Alameda to repay the 2006 Project debt to the City when benefiting properties owned by it developed or were sold. Any unpaid

balance or principal interest was due within ten (10) years from completion of the 2006 Project. As set forth in paragraph 15 of the 2006 Agreement, Alameda agreed to pay early the outstanding balance of approximately \$1,747,000 plus interest owed for the 2000 Project. Rather than paying \$1,747,000 plus interest on or before October 1, 2015, it agreed to pay the Project debt on or before November 6, 2008; and

**WHEREAS**, because of tax considerations as set forth in detail in its December 19<sup>th</sup> letter to the City Council, Alameda desires to modify paragraph 15 of the 2006 Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES:**

(I)

**THAT** Paragraph 15 of the 20906 Agreement is hereby modified to read as follows:

15. Alameda guarantees annual minimum payments on a debt owed by it to the City as provided for in a separate funding agreement (the "2000 Agreement") approved in City Council Resolution No. 01-056. The 2000 Agreement does not provide for guaranteed annual minimal payments. The outstanding balance owed on the 2000 Agreement is approximately \$1,747,077 plus interest, and is due and payable pro-rated when benefiting subject to the 2000 Agreement develop or are sold with the unpaid balance due and payable on or about October 15, 2015. Alameda shall remain obligated to pay the City when the benefiting properties subject to the 2000 Agreement develop or are sold. However, if not enough of the properties sell or develop to enable Alameda to pay the City the equivalent of the annual principal and interest paid by the City on the Municipal Tax Improvement Revenue Bonds, Series 2000A, then Alameda will pay to the City the difference on or before November 6, 2008 and each year thereafter until the balance of \$1,747,077 plus interest has been paid in full. For example, if none of the benefiting properties subject to the 2000 Agreement develop or are sold in FY 07-08, Alameda will owe the City the sum of \$522,568 (which is the principal and interest owed by the City on said Bonds in FY 07-08) on or before November 6, 2008. As a further example, if one parcel sells in FY 07-08 and Alameda therefore pays the City \$100,000 in FY-07-08, Alameda will owe the City the sum of \$422,568 (being \$522,568 - \$100,000) on or before November 6, 2008. As another further example, if five (5) parcels sell in FY 08 and Alameda therefore pays the City \$750,000 in FY 07-08, Alameda will not owe the City any additional sum on or before November 6, 2008.

(II)

THAT City staff is authorized to do all the deeds necessary to accomplish the intent of this Resolution.

DONE AND APPROVED this 22<sup>nd</sup> day of January, 2008.

APPROVED

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

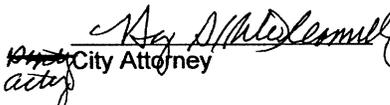
VOTE:

Mayor Miyagishima:	<u>Aye</u>
Councillor Silva:	<u>Absent</u>
Councillor Connor:	<u>Aye</u>
Councillor Archuleta:	<u>Aye</u>
Councillor Small:	<u>Aye</u>
Councillor Jones:	<u>Aye</u>
Councillor Thomas:	<u>Aye</u>

Moved by: Archuleta

Seconded by: Jones

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

## RESOLUTION NO. 07-159

**A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND ALAMEDA LAND INVESTMENT CORPORATION FOR THE CONSTRUCTION OF RINCONADA BLVD. FROM NORTHRISE TO SONOMA RANCH BLVD.; PORTIONS OF SONOMA RANCH BLVD. BETWEEN U.S. HIGHWAY 70 AND LOHMAN AVE.; THE SOUTH FORK ARROYO CROSSING AT SONOMA RANCH BLVD. INCLUDING ASSOCIATED ARROYO IMPROVEMENTS; AND LOHMAN AVENUE FROM ITS CURRENT TERMINUS TO SONOMA RANCH BLVD. UPON RECEIPT OF SPECIAL TAX COUNSEL APPROVAL OF THE EXCLUDABILITY OF INTEREST ON THE CITY'S NMFA LOAN AGREEMENT FROM GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES.**

The City Council of the City of Las Cruces is informed that:

**WHEREAS**, One of the top priorities of the City of Las Cruces Public Works Department is to facilitate the completion of the Sonoma Ranch Boulevard from U.S. Highway 70 to Lohman Avenue; and

**WHEREAS**, Under City Policy, the developer of a parcel of property is responsible for roadway improvements abutting and passing through their property; and

**WHEREAS**, The City has taken the lead to develop a voluntary special assessment agreement which will provide a funding mechanism for roadway construction and utility improvements to construct Rinconada Blvd. from Northrise to Sonoma Ranch Blvd.; portions of Sonoma Ranch Blvd. between U.S. Highway 70 and Lohman Avenue; the South Fork Arroyo Crossing at Sonoma Ranch Blvd. including associated arroyo improvements; and Lohman Avenue from its current terminus to Sonoma Ranch Blvd., hereinafter referred to as the "Project"; and

**WHEREAS**, The proposed Agreement provides that Alameda Land Investment Corporation (Alameda), would be responsible for 100% of the Project costs (currently estimated at \$9,985,448.00) including design and construction except for those specific portions of the Project to be paid in part by the City as designated in the Agreement; and

**WHEREAS**, The Agreement provides that municipal lien would be placed on designated properties owned by Alameda; and

**WHEREAS**, The Agreement also includes a stipulation that Alameda will pay any outstanding balances owed to the City by Alameda for the Northrise assessment

provided for in City Council Resolution No. 01-056 within 24 months of the date of execution of this Agreement.

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

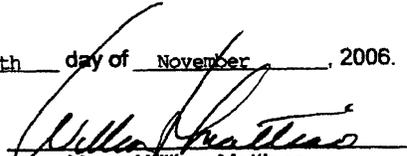
(I)

THAT, the Agreement between the City of Las Cruces and Alameda Land Investment Corporation for the construction of Rinconada Blvd. from Northrise to Sonoma Ranch Blvd.; portions of Sonoma Ranch Blvd. between U.S. Highway 70 and Lohman Ave.; the South Fork Arroyo Crossing at Sonoma Ranch Blvd. including associated arroyo improvements; and Lohman Avenue from its current terminus to Sonoma Ranch Blvd. be approved, upon receipt of special tax counsel approval of the excludability of interest on the City's NMFA loan agreement from gross income for federal income tax purposes.

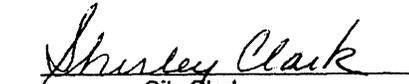
(II)

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

DONE AND APPROVED on this 6th day of November, 2006.

  
\_\_\_\_\_  
Mayor William Mattiace

ATTEST:

  
\_\_\_\_\_  
City Clerk

{SEAL}

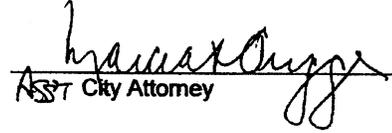
Moved by: Frietze

Seconded by: Archuleta

VOTE:

Mayor Mattiace:	<u>Aye</u>
Councillor Frietze:	<u>Aye</u>
Councillor Connor:	<u>Aye</u>
Councillor Archuleta:	<u>Aye</u>
Councillor Trowbridge:	<u>Aye</u>
Councillor Jones:	<u>Aye</u>
Councillor Miyagishima:	<u>Aye</u>

APPROVED AS TO FORM:

  
Asst City Attorney

**AGREEMENT FOR CONSTRUCTION OF RINCONADA BOULEVARD FROM NORTHRISE TO SONOMA RANCH BLVD.; PORTIONS OF SONOMA RANCH BLVD. BETWEEN U.S. HIGHWAY 70 AND LOHMAN AVENUE; THE SOUTH FORK ARROYO CROSSING AT SONOMA RANCH BLVD INCLUDING ASSOCIATED ARROYO IMPROVEMENTS; AND LOHMAN AVENUE FROM ITS CURRENT TERMINUS TO SONOMA RANCH BOULEVARD.**

This Agreement is entered into on this 16<sup>th</sup> day of November, 2006, by and between the CITY OF LAS CRUCES, ("City"), a New Mexico municipal corporation, and Alameda Land Investment Corporation ("Alameda"), a New Mexico corporation.

**BACKGROUND**

1. The purpose of this Agreement is to provide a funding mechanism to construct Rinconada Boulevard from Northrise to Sonoma Ranch Blvd.; portions of Sonoma Ranch Blvd. between U.S. Highway 70 and Lohman Avenue; the South Fork Arroyo Crossing at Sonoma Ranch Blvd. including associated arroyo improvements; and Lohman Avenue from its current terminus to Sonoma Ranch Blvd.; hereinafter referred to as the "Project".
2. Alameda is the owner of Rinconada Boulevard (excluding a section of approximately 900 LF owned by the Bureau of Land Management), portions of Sonoma Ranch Boulevard, the South Fork Arroyo, and portions of Lohman Avenue described previously as the "Project". Alameda is also the current owner of all of the adjacent property ("Assessed Property") subject to the assessment provided for in this Agreement. The Assessed Property is located within South Fork Village, Pueblo de las Alamedas, Alameda Preserve and Alameda Ranch subdivisions as shown in Exhibit "3".
3. Sonoma Ranch Blvd. and Lohman Ave. are major arterials presently included as part of the City of Las Cruces Metropolitan Planning Organization Major Thoroughfare Plan.
4. There are significant public safety, transportation and development needs that bring about the necessity to construct portions of these roadways. When completed the Project will provide significant traffic relief to Roadrunner Parkway and adjacent collector streets in the area.
5. Alameda has expressed an interest in proceeding with the construction of the Project at this time.
6. The City desires to have all improvements that are a part of the Project to be constructed as one large project to avoid multiple phasing and construction transitions that will compromise the integrity of the Project.

**CONDITIONS**

**NOW, THEREFORE**, in consideration of the mutual obligations contained in the Agreement, the City and Alameda agree as follows:

1. The Project improvements will be within the areas described in Item 1 above, which are more fully described on the attached site plan, labeled Exhibit "1".
2. The City will complete plans and specifications including bidding documents in standard City format for the Project. The final construction plans will be in compliance with all applicable City design and development standards.
3. Alameda will pay for 100% of the Project costs including design and construction except for those specific portions of the Project to be paid in part by the City as designated in this Agreement, and further including all of the bond issuance costs for the bonds that the City will obtain to finance the Project. Those estimated bond issuance costs are \$75,000.
4. Alameda will participate with the City in two different portions of the Project. This Agreement shall include only the pro-rata share attributable to Alameda. The City shall budget its pro-rata share separate from this Agreement.
  - a. Alameda will pay for 75% and the City will pay for 25% of the design and construction of the 900 LF portion of Riconada Blvd. through property presently owned by the Bureau of Land Management.
  - b. Alameda will pay for 50% of the construction cost and 100% of the design cost of the South Fork Arroyo Crossing at Sonoma Ranch in accordance with the Arroyo Crossing Policy. The City will be responsible for the remaining 50% cost of the South Fork Arroyo Crossing.
5. The Project cost will be allocated equally to the Assessed Property acreage. The per-acre assessment will be calculated by dividing the Project cost by the number of acres shown in Exhibit 3. The assessment is roughly estimated to be \$48,102 per acre plus interest.
6. Exhibit "2", attached hereto, reflects the estimated costs for construction of the Project. These costs shall be adjusted to reflect actual construction costs upon completion of the Project. Alameda shall pay the City the sum designated on Exhibit "2", after adjustment to reflect actual construction costs, which will represent Alameda's 100% share of the Project. After award of the construction bid and contract, the City will furnish Alameda an amended Exhibit "2" reflecting the bid award prices and the probable allocation to the Assessed Property. Change order costs, if any, and related costs will be added or deleted from the preliminary costs in Exhibit "2". If bids come in at a price in excess of 10% over the estimated costs in Exhibit "2", Alameda may terminate this Agreement and the related Project prior to bid award by the City Council.
7. The nature of the improvements include sub grade, base course, curb and gutter, hot mix asphalt paving, storm drainage, arroyo improvements, lighting, utilities with mutually agreed upon stub outs to the Assessed Property and irrigation and landscaping in medians and between sidewalks and curbs. All work will be built according to City standards and will be inspected and tested by the City during construction. The assessment will include costs for all improvements, engineering, change orders, and applicable NMGRT.

8. The per acre assessment on each tract, or tracts, as the case may be, shall be paid to the City for each tract as shown in Exhibit "3", at such time as properties are sold, exchanged, assigned, transferred, subdivided or developed as the case may be, whichever occurs first.
9. Alameda's share of the Project cost shall be guaranteed by a lien in favor of the City in the amount shown on Exhibit "2" for the Assessed Property and filed in the office of the Dona Ana County Clerk.
10. Upon payment to the City by Alameda, the City will release a tract or tracts as the case may be from the City lien. Said payment shall include principal and accrued simple interest, if any. The minimum size of each release must be at least one acre unless otherwise approved by the City.
11. Partial releases of lien shall be requested by Alameda and shall be directed to the City of Las Cruces, Office of the Public Works Director, P.O. Box 20000, Las Cruces, New Mexico 88004. Releases of lien shall be delivered to the title company with instructions that the release is to be recorded after the title company has assured the City that Alameda has sufficient proceeds from the sale of a tract of land to pay the City's lien on said tract and/or parcel.
12. Nothing herein shall prohibit early payment by Alameda of the balance or partial balance plus accrued simple interest to date. Early payment to include interest due is not subject to any penalties.
13. If complete payment has not been made by Alameda within ten (10) years from the date of completion of the Project, which shall be when the City accepts the roadways and drainage systems, the entire remaining principal plus accrued interest shall be due and payable at that time. Completion of the Project shall be when the City accepts the roadways and drainage systems.
14. The interest rate charged to Alameda shall be one percent (1%) above the cost to the City for the bonds issued for the Project. Interest charged to Alameda shall accrue when the City starts paying interest on the bonds issued for the Project.
15. Alameda will pay any outstanding balances owed to the City by Alameda Land and Development Corporation for the Northrise assessment provided for in City Council Resolution No. 01-056. The outstanding balance of approximately \$1,747,077.03 plus interest shall be paid within 24 months of the date of execution of this Agreement.
16. If this Agreement is given to an attorney for enforcement of any provision, the party subject to any judgment by the Court shall be liable for reasonable attorneys fees and court costs to the prevailing party.
17. This Agreement contains the entire agreement between the parties and supersedes any and all other Agreements and understandings, oral or written, whether previous to the execution hereof, or contemporaneous herewith.
18. Changes to this Agreement are not binding unless made in writing and signed by both parties.

19. This Agreement will be recorded with the Dona Ana County Clerk and is binding upon and inures to the benefit of the successors and/or assigns of the parties. Alameda shall not assign or transfer in any way any interest Alameda may have in this Agreement without express written consent of the City, which shall not be unreasonably withheld.
20. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

CITY OF LAS CRUCES

By: [Signature]  
William Mattiace, Mayor

APPROVED AS TO FORM:

ASS: [Signature]  
CITY ATTORNEY

State of New Mexico )  
  )ss  
County of Dona Ana )

The foregoing Agreement was acknowledged before me on this 13<sup>th</sup> day of Novemb, 2006, by William Mattiace, Mayor of the City of Las Cruces, on behalf the City of Las Cruces, a New Mexico municipal corporation.

My Commission Expires: 6/21/10

[Signature]  
Notary Public

ALAMEDA LAND INVESTMENT CORP.

By: [Signature]  
Jack Pickel, President

State of New Mexico )  
  )ss  
County of Dona Ana )

The foregoing Agreement was acknowledged before me on this 25<sup>th</sup> day of Sept., 2006, by Jack Pickel on behalf of Alameda Land Investment Corporation.

My Commission Expires: [Signature]  
Notary Public  
OFFICIAL SEAL  
JENNY MACIAS  
NOTARY PUBLIC - STATE OF NEW MEXICO  
My commission expires: 5-26-2008

RESOLUTION NO. 01-056

**A RESOLUTION APPROVING AN AGREEMENT FOR CONSTRUCTION OF  
NORTHRISE DRIVE AND PORTIONS OF RINCONADA AND SONOMA RANCH  
BOULEVARDS TO U.S. HIGHWAY 70 BETWEEN THE CITY OF LAS CRUCES AND  
ALAMEDA LAND AND DEVELOPMENT CORPORATION.**

The City Council of the City of Las Cruces is informed that:

**WHEREAS**, Alameda Land and Development Corporation is a property owner along the proposed Northrise Drive extension east of Roadrunner Parkway as well as Rinconada Blvd., a portion of Sonoma Ranch Blvd and Magdalena Blvd., and

**WHEREAS**, plans and specifications have been prepared to undertake the improvement and construction of these roadways and related utilities, and

**WHEREAS**, there is a need to construct Northrise Drive to provide an alternate access to the East Mesa while US 70 is under construction, and

**WHEREAS**, a regional food bank is proposed to be built on Northrise Drive near Rinconada Blvd and will need street and utility improvements, and

**WHEREAS**, the Dona Ana Branch Community College has requested consideration from Alameda Land and Development Corporation and the City to include Magdalena Blvd in this assessment district, and

**WHEREAS**, land owners in the vicinity of Northrise Drive have expressed a desire to enter into a voluntary special assessment district to construct the infrastructure to meet these needs and to keep pace with planned developments, and

**WHEREAS**, the City has been requested to issue Bonds for the purpose of funding the necessary improvements with a provision that all costs be reimbursed to the City with interest within a fifteen year period.

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

(I)

**THAT** the Agreement between the City and Alameda Land and Development Corporation for construction of portions of Northrise Drive, Rinconada Blvd., and Sonoma Ranch Blvd. within the boundaries of their property is hereby approved.

(II)

**THAT** the Agreement between the City and Alameda Land and Development Corporation for construction of Magdalena Blvd. within the boundaries of their property is hereby approved.

Resolution 01-056  
Page 2 of 2

(III)

THAT this Agreement will only become effective upon the execution of similar agreements with the other participating property owners within the boundaries of the project and having property abutting and fronting these roadways for the participation in their pro-rata share of the cost for improving each of them.

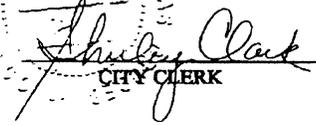
(IV)

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

DONE AND APPROVED this 5th day of Sept., 2000



\_\_\_\_\_  
MAYOR RUBEN A. SMITH

ATTEST:  
  
\_\_\_\_\_  
CITY CLERK

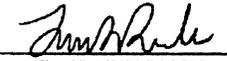
VOTE:

Mayor Smith: aye  
Councillor Fietze: aye  
Councillor Mattiace: aye  
Councillor Valencia: aye  
Councillor Trowbridge: aye  
Councillor Tomlin: aye  
Councillor Hakom: nay

Moved by: Valencia

Seconded by: Fietze

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

**AGREEMENT FOR CONSTRUCTION OF NORTHRISE DRIVE, PORTIONS OF RINCONADA AND SONOMA RANCH BOULEVARDS TO US HIGHWAY 70, AND MAGDALENA BOULEVARD BETWEEN THE CITY OF LAS CRUCES AND ALAMEDA LAND AND DEVELOPMENT CORPORATION**

This Agreement is entered into on this 15<sup>th</sup> day of Sept, 2000, by and between the CITY OF LAS CRUCES, a New Mexico Municipal Corporation ("City"), and Alameda Land and Development Corporation ("Alameda").

**RECTALS**

1. The purpose of this Agreement is the construction of Northrise Drive from it's current termini 1,000 feet east of Roadrunner Parkway to the eastern boundary of the Sonoma Ranch development; Rinconada and Sonoma Ranch Boulevards between US Hwy 70 and Northrise Drive; two Capital Improvement Program (C.I.P.) utility lines for water and wastewater for the area surrounding the above roadways, and Magdalena Boulevard between Sonoma Ranch Boulevard and Roadrunner Parkway, hereinafter referred to as "Project".
2. Alameda is the owner of property along the proposed streets to be know as Northrise Drive, Rinconada, Magdalena and Sonoma Ranch Boulevards.
3. There are public interest and development needs that bring about the necessity to construct portions of these roadways. A temporary incident management route for US Hwy 70 is needed to provide for an alternate route in the event main line traffic has to be cut off while US 70 is being constructed in this reach of the City. The Community Action Agency is proposing to build a food bank on Northrise drive within the boundaries of the proposed project. Access to this site would not be available at this time without Northrise Drive extension.
4. The City budgeted a Capital Improvement Project (C.I.P.) to install major water transmission lines within the roadways on Northrise Drive and Sonoma Ranch Boulevard to provide necessary water service to this part of the City. The C.I.P. water line was initially proposed to be constructed using development impact fees in fiscal years '01/'02 and '02/'03. If the subject roadways are built, it will become necessary to construct the water main as part of the road construction Project.
5. The City had previously entered into an agreement with property owners in the subject area to build C.I.P. Interceptor No. 211, a major wastewater transmission line to provide wastewater service to the subject area. Those property owners request the City rescind the previous agreement, Resolution 99-009, reinstate the development impact fees associated with that line and build that C.I.P. wastewater line as a part of this Project.
6. The property owners in the Project area have prepared construction plans and specifications for construction of the subject improvements.
7. Alameda has expressed an interest in proceeding with the construction of the Project at this time.

8. The City desires to have all improvements that a part of the Project to be constructed as one large project to avoid multiple phasing and construction transitions that will compromise the integrity of the Project. The City also has a desire to provide an accommodation for the Community Action Agency's food bank and an alternate route for US 70 during construction.
9. City subdivision regulations require that developers of land pay their pro-rata share of the cost for street and utility improvements adjacent to their developed property. The City will not be responsible for the construction costs associated with the Project after all payments have been made by property owners.
10. Magdalena has been added to the Project to provide conditional access to the proposed Dona Ana Branch Community College site near the intersection of Sonoma Ranch Blvd and Magdalena Blvd. Alameda agrees to a condition that would prevent the development of the property along Magdalena until such time as the Dona Ana Branch Community College completes their first phase of construction and has opened the site for classes. It is anticipated that there may be as much as 45,000 square feet of building completed in the first phase that will serve about 300 students. The same magnitude of additions are expected continuing over a 12 year period until the facility is built complete to serve 3,500 students.

**NOW, THEREFORE**, in consideration of the mutual obligations contained in this Agreement, the City and Alameda agree as follows:

1. The Project boundaries will be limited to the areas described in item one above and more fully described on Exhibit "A", attached hereto.
2. Alameda will have plans and specifications compiled for bidding documents in standard City format within one (1) month from the effective date of this Agreement. The final construction plans must be in compliance with all applicable design and development standards.
3. As a condition precedent to the City's obligation hereunder, the City must obtain from all property owners within the Project limits, said owner's written agreement to participate in their pro-rata share of the project's cost. If the Agreements are not obtained as aforesaid, this Agreement shall be null and void in its entirety.
4. As a condition precedent to the City's Obligation hereunder, the City Council must approve the issuance of revenue bonds for the Project. If the council does not approve issuance of the revenue bonds, this Agreement shall be null and void in its entirety.
5. The pro-rata share of roadway improvements for all properties will be determined based on the front footage of the property abutting the street. Where properties on both sides of the street are under the same ownership, 100% of the cost for the frontage of the street will be the responsibility of that property owner. Where different property owners abut the street on either side, 50% of the cost will be the responsibility of the respective property owner for that frontage of the street. Utility costs will be assigned to the benefitting property owner. Alameda will be responsible for road improvements to the west of their property to tie Northrise Drive in to the existing Northrise Drive improvements between MBSK and Horizon CMS properties.

6. Alameda agrees to a condition that would prevent the development of the property along Magdalena until such time as the Dona Ana Branch Community College completes their first phase of construction and has opened the site for classes.
7. Exhibit "B", attached hereto, reflects the estimated costs for construction of the Project. These costs shall be adjusted to reflect actual construction costs upon completion of the project. Alameda shall pay the City the sum designated on Exhibit "B", after adjustment to reflect actual construction costs, which will represent Alameda's pro-rata share of the Project. After award of the construction bid and contract, the City will furnish Alameda an amended Exhibit "B" reflecting the bid award prices and the probable allocation to their property. Change order costs, if any, and related costs will be added or deleted from the preliminary costs in Exhibit "B". If bids come in at a price in excess of 5% over the estimated costs in Exhibit "B", Alameda may terminate this Agreement and the related construction project prior to bid award by the City Council.
8. The nature of the improvements include subgrade, base course, curb and gutter, hot mix asphalt paving, storm drainage, lighting, and utilities with mutually agreed upon stub outs to Alameda's property. All work will be built according to City standards and will be inspected and tested by the City during construction. The Assessment will include costs for all improvements, engineering, change orders, and applicable NMGRT.
9. Payment, as set forth in Paragraphs 4 and 5 above, shall be made to the City for each tract as shown in Exhibit "B" prior to issuance of building permit(s) on said tract or tracts as the case may be, or the closing of a sale of said tract or tracts as the case may be, whichever occurs first.
10. Alameda's pro-rata share of the project cost shall be guaranteed by a lien in favor of the City in the amount shown on Exhibit "B" for the affected property and filed in the office of the Dona Ana County Clerk.
11. Upon payment to the City by Alameda, the City will release a tract or tracts as the case may be from the City lien. Said payment shall include principal and accrued simple interest, if any. Releases for a part of a tract shall be calculated based on the proportional size of the tract to the total lien on an area of the Alameda property fronting and abutting the Project. The minimum size of each release must be at least one acre unless otherwise approved by the City.
12. Partial releases of lien shall be requested by Alameda and shall be directed to the City of Las Cruces, Office of the Chief Engineer, P.O. Box 20000, Las Cruces, New Mexico. Releases of lien shall be delivered to the title company with instructions that the release is to be recorded after the title company has assured the City that the company has sufficient proceeds from the sale of a tract of land to pay the City's lien on said tract and/or parcel.
13. Nothing herein shall prohibit early payment by Alameda of the balance or partial balance plus accrued simple interest to date. Early payment to include interest due is not subject to any penalties.

14. If, at the end of a fifteen (15) year period, payment has not been made by Alameda pursuant to Paragraph 7 above, then the entire principal plus accrued interest shall be due and payable at that time.
15. The interest rate charged Alameda shall be one percent (1%) above the cost to the City for the bonds issued for the project. Interest charged Alameda shall commence on completion of construction and acceptance of the roadways and drainage systems by the City.
16. If this Agreement is given to an Attorney for enforcement of any provision, the party subject to any judgement by the Court shall be liable for reasonable Attorneys fees and court costs to the prevailing party.
17. This Agreement contains the entire agreement between the parties and supersedes any and all other Agreements and understandings, oral or written, whether previous to the execution hereof, or contemporaneous herewith.
18. Changes to this Agreement are not binding unless made in writing and signed by both parties.
19. This Agreement will be recorded with the Dona Ana County Clerk and is binding upon and inures to the benefit of the successors and/or assigns of the parties. Alameda shall not assign or transfer in any way any interest Alameda may have in this Agreement without express written consent of the City which shall not be unreasonably withheld. Any such purported transfer or assignment shall be void.
20. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the agreement is reasonably capable of completion.

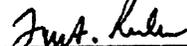
IN WITNESS WHEREOF, the parties have hereunto executed this agreement as of the date and year first above written.

CITY OF LAS CRUCES

By:

  
Ruben A. Smith, Mayor

APPROVED AS TO FORM:

  
CITY ATTORNEY

State of New Mexico )  
 )ss  
County of Dona Ana )

The foregoing Agreement was acknowledged before me on this 15<sup>th</sup> day of Sept, 2000, by Ruben A. Smith, Mayor of the City of Las Cruces, a New Mexico municipal corporation, on behalf of said corporation.

Shuley Clark  
Notary Public

My Commission Expires:

7-22-02

**ALAMEDA LAND AND DEVELOPMENT CORP.**

By: Jack Pickel  
Jack Pickel, President

State of New Mexico )  
 )ss  
County of Dona Ana )

The foregoing Agreement was acknowledged before me on this 12<sup>th</sup> day of Sept, 2000, by Jack Pickel, President, Alameda Land and Development Corporation, on behalf of said corporation.

Alvin R. Rodriguez  
Notary Public

My Commission Expires:

Sept. 8, 2001

**Gloria Podruchny**

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**From:** Jack Pickel [jpickel@zianet.com]  
**Sent:** Friday, October 16, 2009 3:21 PM  
**To:** Robert Garza; Mark Sutter  
**Cc:** Donnie Brainard; 'Work Custer'; MAXPOPO@aol.com; 'Jeanne Ramsey'  
**Subject:** Northrise bond payment schedule reinstatement

Good afternoon Robert and Mark,

I appreciate your taking the time to meet with Donnie and me yesterday to discuss Alameda Land Investment Corporation's bond payment obligations for the Northrise bond issue, and thank you for agreeing to recommend that the City Council reinstate the original payment terms and repeal the change in the agreement that Alameda volunteered to when the 2007 bond issue was considered and approved.

As a follow-up to our discussion and conclusions, I hereby request that you submit an action to the City Council to be heard at its regular meeting on November 2, 2009 to repeal the amended payment plan Alameda offered and agreed to which had the effect of accelerating the Northrise bond payoff in order to not over-burden some of the collateral in Pueblo de Las Alamedas and thereby reinstate the original terms for repayment of the Northrise bond issue obligations.

At the time of the 2007 bond issue discussions Alameda had not sold many tracts subject to the Northrise bonds and did not have a good understanding of the likely market value of those tracts. In late 2007, after the 2007 bond issue was approved and construction was commenced on Rinconada Boulevard, Alameda was successful in selling +/-26 acres to Wal Mart for a super center on Rinconada south of Northrise Drive. With that closed sale, Alameda is confident it can assure the City of Las Cruces that the tracts used as collateral to secure the remaining Northrise and 2007 bond issue obligations can clearly support paying off both bond issues under the original payment terms agreed upon in each bond ordinance.

Alameda appreciates your assistance in this matter. Please let me know if you need additional information in order to proceed.

Best regards,

Jack Pickel  
President  
Alameda Land Investment Corporation