
PETITION AND APPLICATION

BEFORE THE CITY COUNCIL)
OF THE CITY OF RIO RANCHO)

PETITION AND APPLICATION OF AMREP SOUTHWEST INC.
FOR APPROVAL OF THE FORMATION OF
THE LOMAS ENCANTADAS/ENCHANTED HILLS PUBLIC IMPROVEMENT DISTRICT
PURSUANT TO THE CITY OF RIO RANCHO, NEW MEXICO
PUBLIC IMPROVEMENT DEVELOPMENT DISTRICT
GUIDELINES AND APPLICATION PROCEDURES

THIS PETITION AND APPLICATION (this "Petition") is submitted by AMREP Southwest Inc., a New Mexico corporation (the "Petitioner"), pursuant to the Public Improvement District Act, NMSA 1978, §§ 5-11-1 through 27 (2001, as amended) (the "Act") and the City Of Rio Rancho, New Mexico Public Improvement Development District Guidelines and Application Procedures (the "Policy"), for approval by the City of Rio Rancho (the "City") of the formation of the Lomas Encantadas/Enchanted Hills Public Improvement District (the "District" or the "PID"). This Petition is based upon the following:

1. Petitioner. Petitioner is a New Mexico corporation which owns (or has consent to file this Petition from the owners thereof) approximately 357 acres of land (the "Property") wholly located within the City, constituting 320 developable acres of land within the Lomas Encantadas subdivision ("Lomas Encantadas Area") and 37 developable acres of land within the Enchanted Hills subdivision ("Enchanted Hills Area"). The Lomas Encantadas Area is a portion of the 800 acre master-planned community referred to as the Lomas Encantadas subdivision and is generally bounded on the north and east by the Enchanted Hills subdivision, on the west by Rio Rancho Estates Unit 20, and on the south by the Venada Arroyo. The Enchanted Hills Area is generally located in the northwesterly portion of the 2,000 acre Enchanted Hills development and is generally bounded on the north by US 550, on the west by Rio rancho Estates Unit 20 and on the south and west by the Enchanted Hills Unit 11A. The proposed development is wholly located within the City and owned by the Petitioner and Pulte Homes of New Mexico, Inc., a Michigan corporation ("Pulte"). Pulte consents to this Petition. Furthermore, at the appropriate time, all prospective homebuyers and other purchasers of Property within the District shall be provided a disclosure form explaining: (i) that the District will be fully self-sufficient and will

receive no direct or indirect financial support from the City and (ii) the expected and possible special levy amounts and all other financial burdens attributable to the PID.

2. Purpose of the District. Petitioner has filed this Petition with the City seeking approval of the District for the purpose of funding a portion of the costs of the improvements associated with the District (such improvements, the "Project"), including, but not limited to, on-site and off-site roads, sanitary sewer, water, drainage improvements, park and trail improvements, landscaping, grading, and various soft costs. The public improvements include, but are not limited to, the following (collectively, "PID Eligible Infrastructure Improvements"):

A. Lomas Encantadas Area:

- On-site roads including, but not limited to, the collector roads of Camino Encantadas, Kodiak Road, and Aldan Drive;
- Sanitary sewer collection facilities including, but not limited to, the on-site collection lines of 12" in diameter located in Camino Encantadas;
- Water transmission facilities including, but not limited to, the on-site collection lines of 16" in diameter located in Camino Encantadas and 8" in diameter located in Kodiak Road, Nacelle Road, and Nagoya Road;
- Storm drain lines of 54", 56", 60", 66", and 84" in diameter located in Camino Encantadas;
- Off-site road, sewer, and drainage improvements within the right-of-way for Camino Encantadas; and
- Park and trail improvements, landscaping along collector roads, and barrier walls.

B. Enchanted Hills Area:

- On-site roads including, but not limited to, the local roads of Colfax Place NE, Valencia Drive NE, Eddy Place NE, and Sandoval Drive NE;
- Sanitary sewer collection facilities including, but not limited to, the on-site collection lines of 12" in diameter;
- Water transmission facilities including, but not limited to, the on-site collection lines of 8" in diameter;
- On-site storm drains; and

- Local on-site park improvements.

3. Application Contents Required by the Policy. Pursuant to Policy § 2-10-5, this Petition includes the following information:

A. **Legal Description; Identity of Owners.** A legal description of the proposed PID, a pictorial description of its boundaries, and the identity and addresses of all persons or entities with any interest in the property. The Property is vacant and there are no residential electors (as defined in Section 3-1-2(K) NMSA 1978) within the proposed PID. See Tabs 4 and 5 of this Petition.

B. **Title Report.** A current title report for the real property evidencing the names of persons with any interest in the land. See Tab 6 of this Petition.

C. **Property Owner Consent.** The owners of 100% of the Property to be included in the District consent to this Petition, and the District is therefore proposed to be formed without an election, as permitted pursuant to Section 5-11-7(I) NMSA 1978. See Tab 7 of this Petition.

D. **General Plan.** A general development plan including the following information (see Tab 8 of this Petition) which establishes financial parameters for the operation and financing of the District:

- A detailed description of the types of public infrastructure to be financed by the District;
- Estimated construction or acquisition costs of PID Eligible Infrastructure Improvements;
- Projected working capital needs, including funds for repair and replacement of the PID Eligible Infrastructure Improvements and any private infrastructure (collectively, the "District Improvements");
- Annual operation and maintenance costs of the PID Eligible Infrastructure Improvements; and
- Government approvals required for the construction and operation of the District Improvements.

E. **Project Schedule.** An estimated project schedule for the commencement of construction and the completion of (a) the PID Eligible Infrastructure Improvements and (b) the private infrastructure. See Tab 9 of this Petition.

F. **Preliminary Financing Plan.** A financing plan for the PID Eligible Infrastructure Improvements, including capital and operating/maintenance costs for all undedicated improvements undertaken by the District. The financing plan includes (a) the estimated costs of improvements, (b) projected costs of maintenance after construction, and (c) a preliminary description of the PID Eligible Infrastructure Improvements to be owned and maintained by the City and the District. See Tab 10 of this Petition.

G. **Feasibility Study.** A financial feasibility study prepared by an independent professional with appropriate expertise for the entire project (or such phases of the project that are expected to be constructed during the term of the development) covering the District Improvements. See Tab 11 of this Petition.

H. **Appraisal.** A current appraisal (the "MAI Appraisal") of the fair market value of the Property, prepared by a person who is designated as a Member Appraisal Institute and a certified general real estate appraiser. See Tab 12 of this Petition.

I. **Market Demand Study.** The Act and Policy require a Market Demand Study including estimates of the revenue to be generated by the development and estimated market absorption of the development. The revenue generation portion of the Market Demand Study is inapplicable because the Petitioner does not anticipate revenue generated by the District. Estimated market absorption of the District is included in the Appraisal. See Tab 12 and 13 of this Petition.

J. **Petitioner Financial Information.** A description of the Petitioner's professional experience and evidence demonstrating its financial capacity to undertake the development associated with the District Improvements. Such information includes: (1) audited, reviewed or, at minimum, compiled financial statements for the most recent three years, (2) a description of past projects and (3) disclosure of any material litigation. See Tab 14 of this Petition.

K. **Draft Disclosure.** A draft form of disclosure to prospective District landowners, which may be filed and recorded with the Clerk of Sandoval County, New Mexico to act as notification to the homeowner before the purchase of Property within the District describing the anticipated and maximum tax, special levy, assessment, charge, and any other financial obligation that is anticipated to be imposed by the District on the Property. The Draft Disclosure shall be subject to City review and approval. See Tab 15 of this Petition.

L. **Operating Plan.** A draft operating plan for the District describing the operation and maintenance of the infrastructure and all other services in the District, the estimated costs of the

same, and whether operation and maintenance is proposed to be provided by the District, the City, or the applicable homeowner's association. See Tab 16 of this Petition.

M. **Compliance Certificate.** A certificate that the District will comply with the City's current zoning requirements. See Tab 17 of this Petition.

N. **Environmental Assessment.** An independent environmental report or assessment of the Property which will be dedicated to or otherwise owned, leased or operated by the City or the District and a proposed form of indemnity agreement with respect to all environmental law liability. See Tab 18 of this Petition.

4. Proposed Development and Reimbursement Agreement for District. Pursuant to Policy §2-10-6(E), the Petitioner's proposed Development and Reimbursement Agreement (the "Development Agreement") is attached as Tab 19 to this Petition. The Development Agreement will be entered into by the Petitioner, the City, and the District, upon formation of the District, pursuant to NMSA 1978, §5-11-10 (2001). The Development Agreement is intended to be the agreement pertaining to the District, as contemplated by Section 2-10-6(E) of the Policy, so that any existing agreements with the Petitioner or other developers and landowners regarding the provision of PID Eligible Infrastructure Improvements proposed to be furnished to the City shall be deemed amended to reflect the terms of the Development Agreement. The proposed Development Agreement will provide for the following:

A. **Construction Completion Schedule.** The Petitioner's anticipated construction and completion of the Project;

B. **District Financing Issuance.** PID Eligible Infrastructure Improvements will be financed by the Petitioner who will then be reimbursed by the District through a series of reimbursement certificates ("Reimbursement Certificate") in conformity with the reimbursement section of the Development Agreement. The Reimbursement Certificates will be payable to Petitioner and shall carry a rate of interest equivalent to the Wall Street prime rate as it exists on the date of issuance, plus one percent. The Development Agreement, Reimbursement Certificates, and associated financing mechanisms are collectively referred to as "District Financing". The estimated aggregate amount of District Financing is in the principal amount of \$18,510,933. District Financing will be subject to specified parameters, including: (i) the imposition upon homes within the District of the maximum special levy amount as allowed by law; (ii) the District's issuance and delivery of Reimbursement Certificates, which issuance and delivery will occur

concurrently with the District's acquisition of the complete infrastructure and upon Petitioner's request for reimbursement of PID eligible costs of the infrastructure, plus reimbursement to Petitioner for any District associated operation or formation costs or expenses; (iii) requirements that the resolution of the District Board authorize Reimbursement Certificates in substantial compliance with the form provided as Exhibit A to the Development Agreement and delivery of the Reimbursement Certificates evidencing the obligation to Petitioner; (iv) the District may, as necessary, institute foreclosure proceedings against delinquent District special levies after six (6) months following written notice of delinquency and shall establish foreclosure and redemption procedures in accordance with the Act and general statutes relating to the levy and collection of property taxes; and (v) such other provisions as the City, the District and the Petitioner shall determine are appropriate;

C. **Special Levy Imposition.** The imposition of special levies on the Property shall not exceed the maximum allowable rate of special levy for residential property and shall not cause the total tax and assessment obligation for such property, including projected ad valorem taxes, special levies and special assessments, to exceed 1.99% of the anticipated market value of residential property as determined by the MAI Appraisal, a copy of which is located at Tab 12 (the "Maximum Special Levy Amount"). The 1.99% shall include all known and authorized, accrued and unaccrued debt and reimbursement servicing obligations and any other anticipated fees or assessments which may be imposed by the City or special district on a property within the District;

D. **Value to Lien Ratio.** The value to lien ratio, after the issuance of the District Financing and the construction of the PID Financed Improvements to be financed by the District, will be at least 3 to 1 on the MAI Appraisal;

E. **Construction Management.** Construction management will be performed by the Petitioner, subject to specifications, inspection and acceptance by the City; and

F. **Rededication, Conveyance and Maintenance Procedures.** Procedures for the dedication, conveyance and maintenance of the PID Financed Improvements in accordance with the requirements of the City.

5. Proposed Governance of District. The Board of Directors of the District (the "District Board") will be responsible for the administration and collection of the District Special Levy (as defined in Section 6 of this Petition), authorizing Reimbursement Certificates in substantial

compliance with the form provided as Exhibit A to the Development Agreement, enforcing the maximum special levy application to the properties within the District, the performance of the District's obligations as issuer of the District Financing, and the performance of the District's obligations to the City pursuant to the Development Agreement. The responsibility for assuring that the District's obligations to the City, to future owners of property within the District and to the owners of District Financing are properly performed is a matter of fundamental importance to the City. As the local government authorizing the formation of the District, the City necessarily assumes part of that responsibility and should be represented on the District Board.

On that basis, Petitioner requests that the District Board be composed of two full-time employees of the City, two nominees of the Petitioner, and one member agreed upon by the City and the Petitioner. Within six years following the date of formation of the District, the District shall either hold an election of District Board members or governance of the District shall revert to the City Council, as permitted by the Act.

6. The Interests of the Current and Future Owners of Property within the District, the City and the Public will be Served by Forming the District to Construct and Acquire the PID Eligible Infrastructure Improvements. The District will be able to finance the construction and acquisition of the PID Financed Improvements on a long-term basis at a fixed interest rate. The cost of infrastructure is one of the major cost components of residential land development and is included in the price of land and homes that are served by the infrastructure. By financing the PID Financed Improvements as part of a plan of development and financing, the Petitioner will be able to install additional infrastructure and amenities in the District without increasing the cost of the developed home site. For example, the financing structure of the Project has allowed the Petitioner to place an emphasis on landscaping and the outdoor lifestyles of the residents by incorporating attractive landscaping, additional parks and an expansive trail system throughout the District, which is expected to connect up to seven parks within and adjacent to the Lomas Encantadas Area and Enchanted Hills Area. These additional amenities increase the development costs of the District by more than \$1,000,000. These additional amenities would not be possible absent the receipt by the Petitioner of financing from the District.

Formation of the District will enable the Petitioner to plan and construct the District Improvements as a single project, which will serve a defined service area and will promote planned growth rather than growth in a fragmented, piecemeal or leapfrogging pattern, and for the homeowners of the District served by the improvements to pay the cost of those

improvements.

The special levy imposed by the District (the "District Special Levy") represents the incremental annual cost to each homeowner of providing the PID Financed Improvements to serve the Property, in relative proportion to the benefit that each lot within the District receives from the PID Financed Improvements. Notwithstanding any increases to the Maximum Special Levy Amount that may be imposed by the District Board pursuant to NMSA 1978, §5-11-20(H) (1) (2001) and the Rate and Method of Apportionment of Special Levy (Exhibit C of the General Plan attached to this Petition as Tab 8), the Maximum Special Levy Amount is estimated to be \$1,664,870 per year, in aggregate. Subject to the aforementioned increases, the respective initial and Maximum Special Levy Amount per lot are anticipated to be (i) \$1,320 and \$1,779.00 per year for any residential property within the designated Special Levy Class 1A; (ii) \$1,260 and \$1,698.00 per year for any residential property within the designated Special Levy Class 1B ; (iii) \$1,200 and \$1,617.00 per year for any residential property within the designated Special Levy Class 1C; (iv) \$675 and \$910.00 per year for any residential property within the designated Special Levy Class 2; and (v) \$1,200 and \$1,617.00 per year for any residential property within the designated Special Levy Class 3. The estimated Maximum Special Levy Amount will be disclosed to prospective homebuyers in connection with each sale of property within the District. See Tab 15 to this Petition. The PID Eligible Infrastructure Improvements will be built to the City's specifications and requirements and will ultimately be dedicated and conveyed to the City pursuant to the procedures described in the Development Agreement. PID Eligible Infrastructure Improvements will be financed by the Petitioner who will then be reimbursed by the District through payments made by the property owners that are served by those improvements, and not by the residents of the City as a whole.

7. Request for Formation of the District. Petitioner requests that, pursuant to the proposed Formation Resolution attached as Tab 20 to this Petition, the City grant approval of this Petition and that such approval be granted at the City Council meeting scheduled to convene on _____, 2016.

Respectfully submitted,

AMREP SOUTHWEST INC.,
a New Mexico corporation

By:


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