

City of Las Cruces®

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Council Action and Executive Summary

Item # 11

Ordinance/Resolution# 10-163

Council District:

For December 21, 2009
(Adoption Date)

TITLE:

A RESOLUTION TO APPROVE THE AMENDED AND REVISED AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE ALAMEDA SOUTHRIDGE OWNERS ASSOCIATION (ASOA).

PURPOSE(S) OF ACTION:

To approve the amended agreement between Alameda Southridge Owners Association (ASOA) and the City of Las Cruces for operation and maintenance of drainage facilities, street lights, signs and landscaping, within the Alameda Southridge Subdivision, located south of Foothills Road and abutting Paseo de Onate.

Name of Drafter: Mark Johnston, Parks & Rec. Administrator		Department: Facilities / Parks & Recreation		Phone: 541-2550/541-2553	
Department	Signature	Phone	Department	Signature	Phone
Facilities		541-2651	Budget		2300
			Assistant City Manager		2271
Legal		2128	City Manager		2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

In January 1990, the City of Las Cruces and Alameda Southridge Partners Limited, as developer of the Alameda Southridge Subdivisions Units A and B1 (the "Subdivisions"), entered into an agreement regarding certain improvements, developmental standards, and maintenance for the Subdivisions dated January 28, 1990.

In August 1999, the Alameda Southridge Owners Association and the City of Las Cruces amended the existing agreement, which stated the City would assume maintenance of the Paseo Drainage Structures and the Association would continue to provide maintenance of landscaped areas within and adjacent to the ROW.

The existing agreement between the Alameda Southridge Owners Association (ASOA) and the City of Las Cruces is set to expire on January 26, 2010. The current level of maintenance provided by the Alameda Southridge Owners Association is greater than the City can provide; therefore, the Alameda Southridge Owners Association and the City of Las Cruces have agreed to amend and revise the current agreement outlining maintenance and infrastructure responsibilities to be extended through 2019.

The new agreement outlines the responsibilities of each party; the City will pay all water bills for irrigation of landscaping in public right-of-ways in the subdivision as well as electrical costs associated with the existing decorative street lighting system. ASOA shall, at its expense, maintain irrigation systems, plants, and other non-drainage related structure improvements. ASOA will also be responsible for landscaping, signs, and street lighting within the City right-of-way in the Subdivisions until January 26, 2020.

SUPPORT INFORMATION:

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

1. Resolution
2. Exhibit "A": Amended Agreement between the Alameda Southridge Owners Association (ASOA) and the City of Las Cruces
3. Exhibit "B": Alameda Southridge Owners Association (ASOA) aerial overview of current ROW and adjacent property maintenance obligations
4. Exhibit "C": 1999 agreement between Alameda Southridge Homeowners Association and the City of Las Cruces

OPTIONS / ALTERNATIVES:

1. Vote "YES" and approve the Resolution approving the revised and amended agreement between the Alameda Southridge Owners Association (ASOA) and the City of Las Cruces.
2. Vote "NO" and deny the Resolution. Denial of the Resolution will result in no approved amended agreement at this time.
3. Vote to "POSTPONE" the Resolution and direct staff to pursue other options for the operation and maintenance agreement between the Alameda Southridge Owners Association and the City of Las Cruces.

RESOLUTION NO. ¹⁸² 10-163

A RESOLUTION TO APPROVE THE AMENDED AND REVISED AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE ALAMEDA SOUTHRIDGE OWNERS ASSOCIATION (ASOA).

The City Council is informed that:

WHEREAS, in January 1990, the Alameda Southridge Partners Limited and the City of Las Cruces entered into an agreement; and

WHEREAS, in August 1999, the Alameda Southridge Homeowners Association (ASHA), the successor to Alameda Southridge Partners Limited and the City of Las Cruces, amended the existing agreement; and

WHEREAS, the existing agreement between the Alameda Southridge Owners Association (ASOA) and the City of Las Cruces is set to expire on January 26, 2010; and

WHEREAS, the Alameda Southridge Owners Association and the City of Las Cruces have amended and revised the current agreement to be extended through 2019.

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

(I)

THAT, the amended and revised agreement between the Alameda Southridge Owners Association (ASOA) and the City of Las Cruces is approved.

(II)

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

DONE AND APPROVED this _____ day of _____ 2009.

APPROVED:

Mayor

ATTEST:

City Clerk

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Connor: _____

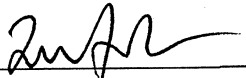
Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Thomas: _____

APPROVED AS TO FORM:



City Attorney

**MAINTENANCE AGREEMENT BETWEEN THE
ALAMEDA SOUTHRIDGE HOME OWNERS ASSOCIATION
AND THE CITY OF LAS CRUCES**

This Amended Agreement is entered into on this (Day) day of (Month) 2009, between the City of Las Cruces (the "City") and the Alameda Southridge Owners Association ("ASOA").

RECITALS

1. The City and Alameda Southridge Partners Limited, as developer of the Alameda Southridge Subdivisions Units A and B1 (the "Subdivisions"), entered into an agreement regarding certain improvements and developmental standards for the Subdivisions dated January 28 1990 (the "Existing Agreement"); and
2. ASOA is the successor in interest to Alameda Southridge Partners Limited with respect to the Existing Agreement; and
3. The existing agreement was amended on August 16 1999 for the operation and maintenance within the Subdivisions located south of foothills road and abutting Paseo De Onate; and
4. Under the Existing Amended Agreement the Association is responsible for maintaining, at its expense, irrigation systems, plants, and other non-drainage structure improvements in the Paseo Drainage Structure, all other drainage structures and all landscaping, signs and street lighting within the City right-of-way of streets in the subdivision until January 26, 2020, the parties may, by written agreement, extend ASOA's maintenance obligation for two additional five (5) year terms; and
5. The amended existing agreement expires on January 26, 2010; it is in the best interest of both parties that the City and ASOA enter into a new agreement for all drainage structures, landscaping, signs and street lighting for the Subdivisions.

AGREEMENTS

Now, Therefore, for valuable consideration the City and ASOA agree as follows:

1. The City will pay the costs associated with water bill(s) for irrigation of all landscaping in public rights-of-ways in the subdivision.

Exhibit A

2. The City will provide plant material for an annual plant replacement program; the City will supply ASOA with a maximum of ten (10) trees and ten (10) shrubs on an annual basis. The City will provide the plant material however; The City will not be responsible for installation of plant material and which installation will be at ASOA's obligation and expense.
3. The City will develop and implement a plan for replacement of irrigation system(s) within the subdivisions and landscaped medians and round-a-bouts over the next ten (10) years. The irrigation replacement does not include parkways or areas that are currently the responsibility of the homeowner as per the city code.
4. The City horticulturist or his/her representative will provide general technical expertise pertaining to landscaped areas within the subdivision on an on-going basis.
5. The City will within 90 days of signing this agreement and on an annual basis provide a general maintenance checklist or specification sheet for guidance to ASOA. The general maintenance checklist will include an outline on when to fertilize, prune, perform disease control and watering requirements based on the type of trees and shrubs that currently exist and recommendations for any replacement plant materials.
6. The City will provide the subdivision assistance in developing a general long term plan for landscaped areas. The purpose of the plan would be to transition the old landscape for the future to accommodate lower maintenance plant materials and irrigation costs while maintaining an aesthetically pleasing landscape. Such a plan would be conceptual in nature but utilize the expertise of the City's Landscape Architect and Horticulturist. If said plan was implemented it would be at ASOA's cost and expense.
7. The City will pay electrical power costs associated with the existing decorative street lighting system in the subdivision.
8. The City will at its expense replace existing light fixtures on existing decorative poles with full cut off light fixtures to comply with the City of Las Cruces Lighting Ordinance by the end of calendar year 2010.
9. The City will provide reasonable assistance to ASOA for it to seek funds for future lighting systems which will include decorative standards.
10. The City will provide general street lighting materials (lamps, fuses, fuse holders, etc.) as can be made available to ASOA. This will be dependent on the City's in-house stock of the parts and materials needed. ASOA will continue maintenance at its expense of the existing street lighting system and any replacement thereof.

Exhibit A

11. The City will grant access to ASOA or its designee(s) to enter onto and conduct maintenance on City owned property within the street right-of-way within the subdivisions, including drainage structures, landscaping, signage, and street lighting.
12. ASOA shall maintain at its expense irrigation system plants and other non drainage structure improvements in the Paseo Drainage Structures, all other drainage structures and all landscaping, signs and street lighting within the City right-of-way of streets in the Subdivisions until January 26 2020.
13. In the event that a maintenance problem or damage to any structure or facility, which is the responsibility of ASOA, is determined by the City's Director of Public Works or his/her designated Representative, the City shall notify ASOA by certified mail at ASOA's address as listed below, and, if:
 - A. no response has been received within ten (10) calendar days,
 - B. the problem has not been resolved within thirty (30) calendar days, or
 - C. the problem requires an immediate resolution as determined by the Public Works Director or his/her designated representative,then the Public Works Director or his/her designated representative may authorize repair of the problem and bill ASOA for 100% of said repairs. This provision shall only be applicable to those facilities and structures maintained by ASOA.
14. Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with the Agreement. Any liability incurred in connection with the Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act.
15. 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.
16. This Agreement shall be binding upon and insure to the benefit of the successors and assignees of the parties. Neither of the parties shall assign any of its rights or obligations under this Agreement without the prior written consent of the other party. No other person shall have any right, benefit or obligation hereunder.

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Exhibit A

17. No amendment supplement modification or waiver of this Agreement shall be binding unless executed in writing by both parties.
18. In the event legal action 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 without limitation reasonable attorneys' fees, in addition to all other relief and remedies to which the prevailing party may be entitled.

ATTEST:

City of Las Cruces

City Clerk

By: _____
City Manager

APPROVED AS TO FORM:

ALAMEDA SOUTHRIDGE
OWNERS ASSOCIATION

City Attorney

By: _____
President



**AMENDED AND RESTATED AGREEMENT BETWEEN THE
ALAMEDA SOUTHRIDGE I OWNERS ASSOCIATION INCORPORATED
AND THE CITY OF LAS CRUCES**

This Amended and Restated Agreement is entered into on this 16th day of August, 1999, between the City of Las Cruces (the "City"), and the Alameda Southridge I Owners Association Incorporated (the "Association").

Whereas, the City and Alameda Southridge Partners Limited, as developer of the Alameda Southridge Subdivisions Units A and B1 (the "Subdivisions"), entered into an agreement regarding certain improvements and developmental standards for the Subdivisions dated January 28, 1990 (the "Existing Agreement"); and

Whereas, the Association is the successor in interest to Alameda Southridge Partners Limited with respect to the Existing Agreement; and

Whereas, under the Existing Agreement, the Association is responsible for maintaining, at its expense, all drainage structures, landscaping, signs and street lighting in the Subdivisions until January 26, 2010; and

Whereas, the Association alleges that the drainage structures along Paseo de Oñate that are in one of the Subdivisions (the "Paseo Drainage Structures") have been damaged by excessive stormwater runoff from a subdivision adjacent to the Subdivisions and the Association claims that the City is responsible for this damage; and

Whereas, the City denies that the Paseo Drainage Structures have been damaged and further denies that if such damage exists that it is responsible for the damage. In order to resolve this disputed claim the City has offered to clean and undertake any repair necessary and subsequently assume responsibility for maintenance of the Paseo Drainage Structures and the Association is willing to accept the City's offer on the terms and conditions specified in this Agreement; and

Whereas, the City claims the placement of rocks in the Paseo Drainage Structures as previously commenced by the Association is an improper and expensive method for addressing the Association's alleged claims; and

Whereas, because of the need to amend the Existing Agreement to reflect the parties' agreement with respect to the Paseo Drainage Structures, the parties believe that it is prudent to amend and restate the Existing Agreement as follows:

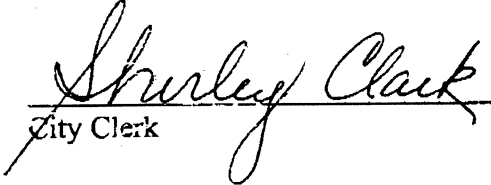
1. The City shall, within 90 days of the date of this Agreement, clean and repair the Paseo Drainage Structures (as generally identified on the map labeled exhibit 1). The City shall thereafter be solely responsible for maintaining, at its expense, the Paseo Drainage Structures.

2. The Association shall maintain, at its expense, irrigation system, plants, and other nondrainage structure improvements in the Paseo Drainage Structures, all other drainage structures and all landscaping, signs and street lighting within the City right-of-way of streets in the Subdivisions until January 26, 2010. The parties may, by written agreement, extend the Association's maintenance obligation.
3. The City hereby agrees to grant access to the Association or its representatives or contractors, to enter onto and conduct maintenance on City owned property within the street right-of-way within the subdivisions, including drainage structures, landscaping, signage, and street lighting.
4. In the event of a maintenance problem or damage to any structure or facility is determined by the City's Director of Development Services Division or his/her designated representative, the City shall notify the Association by certified mail at the Association's address as listed below. If:
 - A. no response has been received within ten (10) calendar days,
 - B. the problem has not been resolved within thirty (30) calendar days, or
 - C. the problem requires an immediate resolution as determined by the City's Director of Development Services Division or his/her designated representative,then the City's Director of Development Services Division or his/her designated representative may authorize repair of the problem and bill the Association for 100% of said repairs. This provision shall only be applicable to those facilities and structures maintained by the Association.
5. The Association shall indemnify and hold the City harmless from and against all claims arising from the Association's maintenance activities or from failures of structures or performance of any drainage structure installed and maintained by the Association (as successor in interest to the original developer) until the Association's maintenance obligations under paragraph 2 of this Agreement have terminated including any extensions.
6. The City shall indemnify and hold the Association harmless from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or relating to the performance of the City's obligations under this Agreement, including, without limitation, any damage to the Association's irrigation systems or plants in the drainage structures.
7. 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.


- 8. This Agreement shall be binding upon and inure to the benefit of the successors and assignees of the parties. Neither of the parties shall assign any of its rights or obligations under this Agreement without the prior written consent of the other party. No other person shall have any right, benefit or obligation hereunder.
- 9. No amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by both parties.
- 10. Time is of the essence for purposes of each and every provision of this Agreement.
- 11. In the event legal action 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 without limitation reasonable attorneys' fees, in addition to all other relief and remedies to which the prevailing party may be entitled.

ATTEST:

CITY OF LAS CRUCES



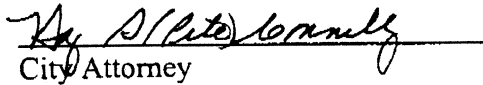
 City Clerk

By: 

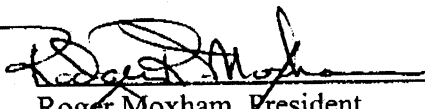
 City Manager

APPROVED AS TO FORM:

ALAMEDA SOUTHRIDGE I OWNERS ASSOCIATION INCORPORATED



 City Attorney

By: 

 Roger Moxham, President
 751 Loma Verde Lane
 Las Cruces, New Mexico 88011

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