



Council Action and Executive Summary

Item # 6 Ordinance/Resolution# 14-040

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of September 3, 2013
(Adoption Date)

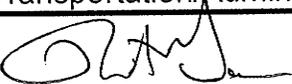
Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING A SETTLEMENT AGREEMENT BETWEEN THE BOULDERS AT SONOMA RANCH HOMEOWNERS ASSOCIATION AND THE CITY OF LAS CRUCES.

PURPOSE(S) OF ACTION:

To approve a settlement agreement.

COUNCIL DISTRICT: 6		
Drafter/Staff Contact: Lisa Murphy <i>LM</i>	Department/Section: Transportation/Admin	Phone: 541-2048
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

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

Water service lines within the subdivision began to leak and the City's Utilities Department agreed to replace the water service lines and related fittings at the City's sole expense. This work required that numerous cuts be made to the pavement of the affected streets, which were repaired by City crews with asphalt patches in compliance with City standards. The City has further crack sealed both patch seams and cracks within the subdivision.

The Association has taken the position that the pavement cuts and subsequent patches have negatively affected not only the aesthetic condition of the streets but have also reduced their useful life, thus increasing their financial burden towards maintenance of the streets, and further

(Continue on additional sheets as required)

contend that the City is obligated to restore the streets to their prior condition. While the City contends that it has no obligation to do so, an agreement has been reached to apply a surface treatment known as a "slurry seal" to the streets to satisfy the concerns of the Association and settle this disputed claim.

A slurry seal is an asphalt emulsion and aggregate roadway surface treatment that fills small cracks, stops raveling, and will serve to extend the life and improve the aesthetic appearance of roadways. However, for a slurry seal to adhere properly, it must be applied to streets that have enough exposed aggregate. City staff has determined that the streets in The Boulders are still in good condition and that it may be three or more years before a slurry seal application will be beneficial. Thus, the Settlement Agreement Between The Boulders at Sonoma Ranch Homeowners Association and The City of Las Cruces (Agreement) stipulates that once City staff has determined that all the affected streets are in a suitable condition, the City will, at its sole expense; hire a contractor to apply a slurry seal. The estimated cost of the slurry seal treatment is \$34,061.04 plus New Mexico Gross Receipts Tax in the amount of \$2,575.87 for a total of \$36,366.91. The cost of this treatment is dependent on material costs and may differ from this amount at the time of application. The funds will come from the appropriate budgeted Utilities Department Fund.

The Agreement further stipulates that if the Association wishes to have a slurry seal applied before the City believes it to be appropriate, the City will pay the Association \$36,366.91 which will enable the Association to hire a contractor to apply the slurry seal. In either case, completion of the slurry seal application will completely satisfy the disputed claim and release the City from any additional obligation for any maintenance or repair work on the streets within The Boulders (except patching of any future utility pavement cuts).

Attached is the Agreement and a map of the affected subdivision. As it is not known in what year the slurry seal will actually be applied, project costs are only estimates and the funds have not been budgeted in this fiscal year.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Settlement Agreement Between the Boulders at Sonoma Ranch Homeowners Association and the City of Las Cruces.
3. Attachment "A", Map of The Boulders at Sonoma Ranch gated community.

(Continue on additional sheets as required)

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?	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY _____.
	No	<input checked="" 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 a disputed claim.
2. Vote "No"; this will not allow the City Manager to sign the Agreement, resulting in no City participation in a slurry seal application within The Boulders subdivision.
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.

1. N/A

(Continue on additional sheets as required)

RESOLUTION NO. 14-040**A RESOLUTION APPROVING A SETTLEMENT AGREEMENT BETWEEN THE BOULDERS AT SONOMA RANCH HOMEOWNERS ASSOCIATION AND THE CITY OF LAS CRUCES.**

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

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

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

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

WHEREAS, repairs to the water utility lines required cutting and patching of the streets within The Boulders, and the patches were in compliance with City standards; and

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

WHEREAS, the City disputes any obligation to repair the streets but seeks to resolve this disputed claim and agrees to apply a slurry seal roadway surface treatment to the affected streets as stipulated in the Settlement Agreement Between The Boulders at Sonoma Ranch Homeowners Association and The City of Las Cruces (Agreement).

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

(I)

THAT a slurry seal surface treatment will be applied to the affected streets within

The Boulders as stipulated in the Agreement.

(II)

THAT the City Manager is authorized to sign the Agreement attached hereto as Exhibit A and made part of this Resolution.

(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 _____, 2013.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

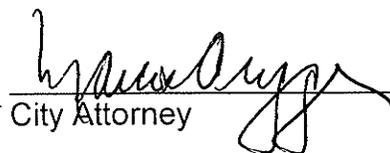
Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Smith:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Thomas:	_____

ASST 
City Attorney

**SETTLEMENT AGREEMENT BETWEEN
THE BOULDERS AT SONOMA RANCH HOMEOWNERS ASSOCIATION
AND THE CITY OF LAS CRUCES**

This Settlement Agreement ("Agreement") is entered into on this _____ day of _____, 2013, between the **City of Las Cruces** (the "City") and **The Boulders at Sonoma Ranch Homeowners Association, Inc.** (the "Association"), a New Mexico domestic non-profit corporation.

BACKGROUND

1. The Boulders Gated Community Phases One and Two ("The Boulders") is a private, gated residential subdivision within the City limits. The streets within The Boulders, specifically Boulders Drive, Stone Mountain Lane, Oro Piedras Drive, and Rock Springs Road (collectively "the affected streets"), are privately owned and maintained by the Association and have never been dedicated to or accepted by the City. The affected streets are also considered to be utility easements as referenced in Paragraph III(1)(F) of the Declaration of Protective Covenants for The Boulders, which Declaration was recorded on October 4, 2002 in Book 366, Pages 1054-1075 of the records of Dona Ana County, New Mexico.
2. Residences within The Boulders 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 ten (10) years ago by a contractor on behalf of the developer of The Boulders.

3. Upon information and belief, all applicable statutes of limitations for claims against the original contractor had expired when leaks were discovered with the service lines and related fittings installed by the original contractor. Therefore, after meeting with representatives of the Association, the City's Utilities Department agreed to replace the water service lines and related fittings, which were part of the City's water utility system, at the City's sole expense.
4. The City has completed the replacement project, which required numerous cuts to the pavement of the affected streets, which cuts were repaired with asphalt patches in compliance with City standards. The City has further crack sealed both patch seams and cracks within the affected streets at an estimated cost of \$5,000.
5. The Association is concerned that the pavement cuts and subsequent patches have affected not only the aesthetic condition of the affected streets but have also reduced their 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 patched the pavement cuts 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 City has determined that the application of a slurry seal to the affected streets is the most effective way both to extend their life and to improve their aesthetic appearance. Slurry seal fills small cracks, stops raveling and improves skid resistance of asphalt pavement through the application of a quick setting asphalt emulsion, fine aggregate and mineral filler, additive and water.
2. As of the date of this Agreement, the affected streets lack enough exposed aggregate for the slurry seal to adhere properly. Therefore, City staff will periodically inspect the affected streets to determine their suitability for a slurry seal application. City staff reasonably expects that it may be five (5) years or more before there is sufficient exposed aggregate for the affected streets to materially benefit from the slurry seal application.
3. Once City staff has determined that all of the affected streets have sufficient exposed aggregate to materially benefit from application of the slurry seal, 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 slurry seal to the affected streets, specifically being Boulders Drive from Golf Club Road to Stone Mountain Lane, Oro Piedras Drive from Boulders Drive to the cul-de-sac, Rock Springs Road

from Boulders Drive to Sonoma Ranch Boulevard, and Stone Mountain Lane from Boulders Drive to the cul-de-sac, in complete satisfaction of the disputed claim set forth above, and will pay for that expense from the appropriate budgeted Utilities Department fund. The estimated present cost for the slurry seal project to the four (4) affected streets is \$34,061.04 plus New Mexico gross receipts tax in the amount of \$2,575.87 for an estimated total project cost of \$36,636.91 as set forth in the estimate attached as Exhibit "A", and will pay for the expense from the appropriate budgeted Utilities Department fund. The cost at the time the slurry seal is applied may be more or less than this amount, depending on the cost for slurry seal at the time of application.

4. If the Association wants the slurry seal applied to the affected streets before City staff has determined that all of the affected streets have sufficient exposed aggregate to materially benefit therefrom, the City will pay the Association the sum of \$36,636.91 to enable the Association to hire a contractor to apply the slurry seal in complete satisfaction of the disputed claim set forth above; and will pay for that expense from the appropriate budgeted Utilities Department fund.
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 of the parties 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 Boulders 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 BOULDERS AT SONOMA RANCH
HOMEOWNERS ASSOCIATION, INC.

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

By: _____, President
(Signature)

APPROVED BY:

A handwritten signature in black ink, appearing to read "Marcia B. Driggers", written over a horizontal line.

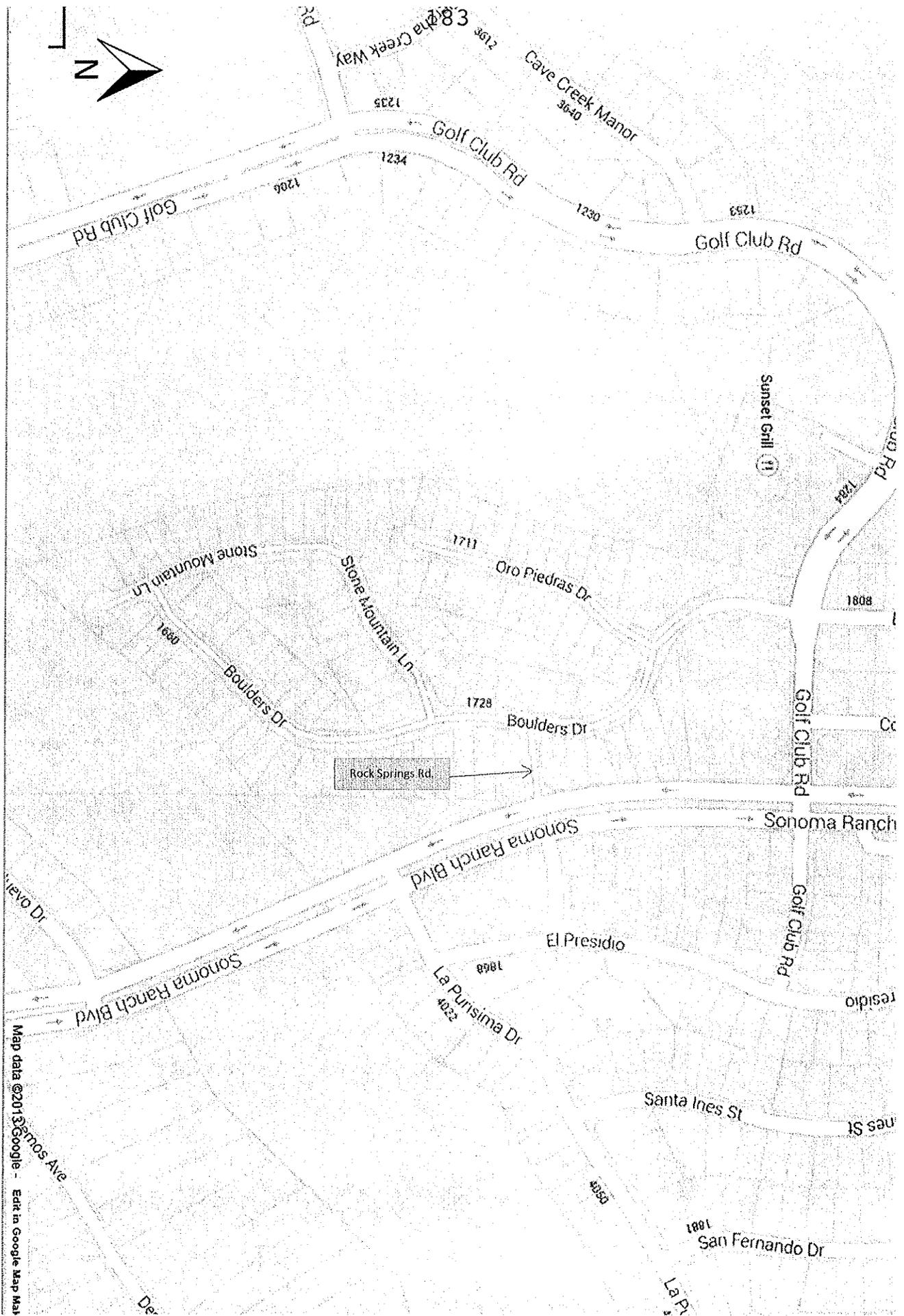
Marcia B. Driggers
Senior Assistant City Attorney

Estimate for slurry work in the Boulders

Council District	Street	From	To	Length	Width	Surface Area (Sq. Yds.)	001 MOBILIZATION (Mile)	097 Type II Slurry 40,000+ (SY)	Unit Cost Per SY	Polymer Modified Oil (SY)	Unit Cost Per SY	Estimate Cost per Street
6	Boulder Drive	Golf Club Road	Stone Mountain Lane	2000	33	6534	0	7834	\$1.27	2934	\$0.89	\$15,814.44
6	Oro Piedras Drive	Boulder Drive	Cul-de-sac	800	33	2934	0	2934	\$1.27	2934	\$0.89	\$6,337.44
6	Rock Springs Road	Boulder Drive	Somerset Ranch Boulevard	250	33	917	0	917	\$1.27	917	\$0.89	\$1,980.72
6	Stone Mountain Lane	Boulder Drive	Boulders Drive	1250	33	4584	0	4584	\$1.27	4584	\$0.89	\$9,901.44

Sub Total: \$34,061.04
 NMGRT: \$2,575.87
 Total: **\$36,636.91**

EXHIBIT A



Map data ©2013 Google - Edit in Google Map Mas