



# City of Las Cruces®

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 16Ordinance/Resolution# 16-094For Meeting of \_\_\_\_\_  
(Ordinance First Reading Date)For Meeting of October 5, 2015  
(Adoption Date)

Please check box that applies to this item:

 QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

**TITLE: A RESOLUTION AMENDING PARAGRAPHS 8 AND 13 OF THE 2000 AGREEMENT FOR CONSTRUCTION OF NORTHRISE DRIVE AND PORTIONS OF RINCONADA AND SONOMA RANCH BOULEVARDS TO US HIGHWAY 70 BETWEEN THE CITY OF LAS CRUCES AND SONOMA RANCH SUBDIVISION LTD. CO.**

**PURPOSE(S) OF ACTION:**

To approve amendments to an agreement.

<b>COUNCIL DISTRICT: 6</b>		
<b><u>Drafter/Staff Contact:</u></b> Monica Campbell	<b><u>Department/Section:</u></b> Legal/City Attorney	<b><u>Phone:</u></b> 541-2128
<b><u>City Manager Signature:</u></b>	<i>Daniel Avila</i>	

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

In 2000, the City and Sonoma Ranch Subdivision Ltd. Co. ("Sonoma Ranch Subdivision") entered into an *Agreement for Construction of Northrise Drive and Portions of Rinconada and Sonoma Ranch Boulevards to US Highway 70 Between the City of Las Cruces and Sonoma Ranch Subdivision Ltd. Co.* ("Agreement") in the form of a Voluntary Assessment District ("VAD"). Two other property owners were involved in the same construction project. The City issued bonds for the project. Sonoma Ranch Subdivision's share of the cost of the project was estimated to be approximately \$1.8 million dollars. Sonoma Ranch Subdivision was to repay the City for the cost of the project through the sale of land to be developed. The City was given a municipal lien on the Sonoma Ranch Subdivision property. As the property sold, a partial release was given on the property. The Agreement states that at the end of a 15-year period of time (September 16, 2016), the entire remaining principal plus accrued interest is to be paid. The amount owed to the City as of September 15, 2015 is \$1,135,989.88. (Attachment "A").

Sonoma Ranch North, LLC a/k/a Sonoma Ranch Subdivision has requested that they be given an additional five year extension to make the final payment as well as the ability to transfer or sell portions of the land without being required to pay off the remaining obligation at this time. (Attachment "B"). As noted above, Sonoma Ranch Subdivision must pay off their remaining obligation of approximately \$1.16 million on September 15, 2016. Sonoma Ranch Subdivision is

(Continue on additional sheets as required)

also requesting that they be allowed to transfer and/or sell their remaining parcels without paying the City to obtain a partial release of the municipal lien. The current amount to obtain a partial release is approximately \$6,870 an acre. Sonoma Ranch Subdivision's justification was that other parties have been granted such accommodation in the past and that the economic downturn of 2007 still continues to impact their development plans.

Staff Review: This is the second request from Sonoma Ranch Subdivision concerning their repayment obligation to the City and this VAD project. Earlier this year, Council approved a Sonoma Ranch Subdivision request that they be given credit for interest savings when the City refinanced these bonds. Those savings to Sonoma Ranch Subdivision totaled \$100,991.82 through September 15, 2015 (\$96,496.26 as of June 30, 2015 (Exhibit A to Resolution No. 16-020)).

The current request implicates LCMC 1997, City Charter, Section 1.05(b) and the Anti-Donation clause of the New Mexico Constitution in that the City "shall not directly or indirectly lend or pledge its credit . . . to or in aid of any . . . private corporation." (LCMC 1997, City Charter, Section 1.05 (b)). The City may extend the terms of the Agreement concerning repayment if the City receives appropriate consideration for indirectly lending its credit. Accordingly, it is recommended that a fee of 5% per annum be paid on the remaining principal and interest for up to five years. For example, a fee of \$58,250 would be required on September 15, 2016 should Sonoma Ranch Subdivision desire to extend its principal and interest payment of \$1.16 million until September 16, 2017.

With respect to Sonoma Ranch Subdivision's request to allow them to transfer or sell property upon which a municipal lien resides without a paid partial release, staff has concerns. Staff would recommend that there be a limited ability to transfer property only if the new owner agrees to a municipal lien, and that any other lienholder sign a subordination agreement acknowledging the priority of the municipal lien.

#### **SUPPORT INFORMATION:**

1. Resolution.
2. Attachment "A", amount owed to the City as of September 15, 2015.
3. Attachment "B", request for five year extension to make final payment.

**SOURCE OF FUNDING:**

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

**BUDGET NARRATIVE**

The first fee payment would be made in FY17. Funds would be budgeted at that time.

**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 approve the amendments to the 2000 Agreement and allow Sonoma Ranch Subdivision a five-year extension for the payment of remaining principal and accrued interest, as well as payment to the City of Las Cruces in consideration of the five-year extension.
2. Vote "No"; this means that no extension will be approved and the balloon payment due September 15, 2016 will remain in place.
3. Vote to "Amend"; this could include modifications to the requested amendments to the Agreement.
4. Vote to "Table"; this could allow the City Council to provide further direction to staff.

**REFERENCE INFORMATION:**

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

1. Resolution No. 16-020

(Continue on additional sheets as required)

2. Resolution No. 01-057

(Continue on additional sheets as required)

RESOLUTION NO. 16-094**A RESOLUTION AMENDING PARAGRAPHS 8 AND 13 OF THE 2000 AGREEMENT FOR CONSTRUCTION OF NORTHRISE DRIVE AND PORTIONS OF RINCONADA AND SONOMA RANCH BOULEVARDS TO US HIGHWAY 70 BETWEEN THE CITY OF LAS CRUCES AND SONOMA RANCH SUBDIVISION LTD. CO.**

The City Council is informed that:

**WHEREAS**, Sonoma Ranch Subdivision Ltd. Co. ("Sonoma Ranch Subdivision") was one of the major property owners along the Northrise Drive extension east of Roadrunner Parkway as well as Rinconada Boulevard, and a portion of Sonoma Ranch Boulevard; and

**WHEREAS**, Sonoma Ranch Subdivision agreed to enter into a Voluntary Assessment District ("VAD") to construct the infrastructure to support planned developments; and

**WHEREAS**, the City of Las Cruces issued bonds to fund the necessary improvements and build the necessary improvements to support the planned developments; and

**WHEREAS**, Sonoma Ranch Subdivision agreed to reimburse the City with interest within a fifteen (15) year period; and

**WHEREAS**, on September 15, 2016, a balloon payment of approximately One Million One Hundred and Sixty-Five Thousand Dollars (\$1,165,000) dollars is due to the City; and

**WHEREAS**, Sonoma Ranch Subdivision has requested that they be given a five year extension; and

**WHEREAS**, Sonoma Ranch Subdivision has agreed to pay the City a fee equivalent to five percent (5%) per annum on the unpaid principal amount outstanding

and accrued interest as of September 15, 2016, with the first payment due September 15, 2016 and the subsequent annual payment due on September 15 of subsequent years until the final payment of the principal amount outstanding and accrued interest is paid on September 15, 2021; and

**WHEREAS**, Sonoma Ranch Subdivision Ltd. Co. has also requested that they be allowed to transfer parcels of land to a buyer and not be required to make payments in order to secure partial releases on the land; and

**WHEREAS**, Sonoma Ranch Subdivision has agreed that any transfer of land will require that the subsequent buyer will be required to consent to the City's municipal lien and that any other lienholder will be required to execute a subordination agreement in favor of the City's municipal lien.

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

(I)

**THAT** Paragraph 8 of the Agreement between the City of Las Cruces and Sonoma Ranch Subdivision Ltd. Co. dated September 15, 2000 and incorporated into Resolution 01-057 is amended to read as follows:

8. 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 the 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; however, Sonoma Ranch may transfer a tract one time to a subsequent owner, provided that the tract is not sold to the subsequent owner, and the subsequent owner consents in writing to the City's municipal lien on the tract, and that any other lienholder on the tract signs a subordination agreement in favor of the City's municipal lien.

(II)

THAT Paragraph 13 of the Agreement between the City of Las Cruces and Sonoma Ranch Subdivision Ltd. Co. dated September 15, 2000 and incorporated into Resolution 01-057 is amended to read as follows:

13. If, at the end of a fifteen (15) year period, September 15, 2016, payment has not been made by Sonoma pursuant to Paragraph 7 above, then the entire principal amount plus accrued interest shall be due and payable at that time. If Sonoma desires to extend this final payment for five years until September 15, 2021, then an additional fee equivalent of an interest rate of five percent (5%) per annum shall be applied to the entire principal amount outstanding plus accrued interest with this interest rate payment due annually on September 15, 2016 and continuing each September 15 thereafter until September 15, 2021 when the entire remaining principal amount plus accrued interest shall be due and payable at that time.

(III)

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

DONE AND APPROVED on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

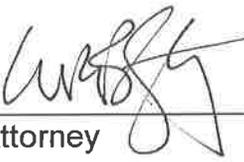
(SEAL)

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

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

VOTE:  
Mayor Miyagishima: \_\_\_\_\_  
Councillor Silva: \_\_\_\_\_  
Councillor Smith: \_\_\_\_\_  
Councillor Pedroza: \_\_\_\_\_  
Councillor Small: \_\_\_\_\_  
Councillor Sorg: \_\_\_\_\_  
Councillor Levatino: \_\_\_\_\_

APPROVED AS TO FORM:

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

**Savings Estimates due to Refunding Debt related to the Northrise and  
Sonoma Ranch Voluntary Assessment Districts**

Construction of Northrise Drive and Portions of Rinconada and Sonoma Ranch Boulevards to U.S.  
Highway 70 Agreements from 2000

<i>Sonoma Ranch</i>		Total principal				
		Total interest - original				
		Total interest - revised				
		Total due - original				
		Total due - revised				
Date	Acres sold	Interest at original interest rate	Interest at refunded interest rate	Interest Savings due to Debt Refunding	Total Owed by Developer	
7/14/2011	18.473 acres	54,527.63	53,418.26	1,109.37	(1,109.37)	
12/21/2011	1.501 acres	4,632.36	4,489.37	142.99	(142.99)	
9/27/2012	12.742 acres	42,332.64	39,619.20	2,713.44	(2,713.44)	
5/16/2013	3.37 acres	11,853.05	10,807.96	1,045.09	(1,045.09)	
12/27/2013	3.905 acres	14,456.60	12,885.79	1,570.81	(1,570.81)	
11/4/2014	2.79 acres	11,071.93	9,579.21	1,492.72	(1,492.72)	
9/15/2015 *	165.46 acres	589,994.96	497,077.56	92,917.40	1,144,064.30	
		<b>728,869.17</b>	<b>627,877.35</b>	<b>100,991.82</b>	<b>1,135,989.88</b>	

<i>Alameda Land</i>		Total principal				
		Total interest - original				
		Total interest - revised				
		Total due - original				
		Total due - revised				
Date	Acres sold	Interest at original interest rate	Interest at refunded interest rate	Interest Savings due to Debt Refunding	Total Owed under current agreement	
3/19/2012	7.795 acres	67,021.69	64,665.87	2,355.82	-	
9/17/2012	2.905 acres	26,264.71	24,734.20	1,530.51	-	
9/15/2015 *	3.105 acres	36,336.81	30,848.95	5,487.86	78,116.26	
Total		<b>129,623.21</b>	<b>120,249.02</b>	<b>9,374.19</b>	<b>78,116.26</b>	

\* assuming final payoff of remaining acres on September 15, 2015 - corrected cost per acre for Sonoma Ranch  
Notes:

Interest rates used are the All-In TIC plus 1% as per the agreement

Only those amounts sold after the JU refunding date of 4/14/09 are included in this calculation.

Amounts sold prior to the refunding would not have any interest at the refunded rate.



August 18, 2015

Robert Garza, City Manager  
City of Las Cruces  
P O Box 20000  
Las Cruces, NM 88004

Dear Robert:

As per our conversation of this morning, we are in need of amending our Northrise Drive Agreement with the City, dated September 15, 2000. We are aware that similar amendments have been granted to other parties in the project and we would much appreciate receiving the same accommodation. As you are aware, the economic downturn that started in 2007 and has continued since, although to a lesser extent, severely impacted the land development business, substantially delaying many Master Planned projects. It appears to us that the economy has slowly started to improve over the last couple of years and continues to do so, but the impact the downturn has had, on our business, will not provide us with the opportunity to meet the time limitations set in our Agreement with the City.

To be more specific, we need the agreement to be amended to change the timeframe from fifteen (15) to twenty (20) years. We would also respectfully request that the agreement also be amended to add a "Successors and Assigns" clause, and amend Section 8 of the agreement, to allow for the transfer of large parcels of undeveloped land to a buyer and not require the payments be made until a building permit is required. This would allow us to sell portions, or all, of the property without being required to pay off the outstanding obligation and have the lien follow the land.

Best regards,

George B. Rawson, member  
Sonoma Ranch North, LLC

GBR/bz

Sonoma Ranch Communities  
3500 Sedona Hills Parkway  
Las Cruces, NM 88011  
575.521.0770  
www.sonomaranch.com

SCANNED



# City of Las Cruces®

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## COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of \_\_\_\_\_  
(Ordinance First Reading Date)

For Meeting of October 5, 2015  
(Adoption Date)

TITLE:

A RESOLUTION AMENDING PARAGRAPHS 8 AND 13 OF THE 2000 AGREEMENT FOR CONSTRUCTION OF NORTHRISE DRIVE AND PORTIONS OF RINCONADA AND SONOMA RANCH BOULEVARDS TO US HIGHWAY 70 BETWEEN THE CITY OF LAS CRUCES AND SONOMA RANCH SUBDIVISION LTD. CO.

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes  No

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	<i>Monica Campbell</i>	541-2128	9/18/15
Department Director	<i>[Signature]</i>	541-2128	18 Sept 2015
Other City Treasurer		541-2035	
Assistant City Manager /CAO	<i>[Signature]</i>	541-2100	9/21/15
Management & Budget Manager	<i>Macgregor yon R. Lundien</i>	541-2107	9/18/15
Assistant City Manager/COO	<i>[Signature]</i>	541-2271	9/22/15
City Attorney	<i>[Signature]</i>	541-2128	18 Sept 2015
City Clerk - Interim	<i>[Signature]</i>	541-2115	9/25/15