



**PURCHASING ITEM
FOR
COUNCIL AGENDA
Memo No. CA12-168**

1. Agenda Item Number:
26
2. Council Meeting Date:
April 26, 2012

TO: MAYOR & COUNCIL

THROUGH: CITY MANAGER

3. Date Prepared: March 30, 2012

4. Requesting Department: Transportation & Development

5. SUBJECT: Award a design and construction contract to Salt River Project for the irrigation relocation for the Ocotillo Road Improvements from Arizona Avenue to McQueen Road Project, Project No. ST0808-302, in an amount not to exceed \$283,794.

6. RECOMMENDATION: Staff recommends that Council award a design and construction contract to Salt River Project for the irrigation relocation for the Ocotillo Road Improvements from Arizona Avenue to McQueen Road Project, Project No. ST0808-302, in an amount not to exceed \$283,794.

7. BACKGROUND/DISCUSSION: The Ocotillo Road project will improve Ocotillo Road from Arizona Avenue to McQueen Road. Per the Transportation Master Plan, Ocotillo Road will be a phased 4-lane arterial with bike lanes, sidewalks, curb and gutters, street lighting, storm drainage, landscaping, right-of-way acquisition and private utility relocation. In addition, existing sewer lines within the project limits will be rehabilitated, new potable and reclaimed water mains will be constructed, and laterals for sewer and water will be provided to all undeveloped parcels.

Salt River Project will incur costs to install an irrigation structure to accommodate the Ocotillo Road Improvements from Arizona Avenue to McQueen Road Project. Since Salt River Project has prior rights, the City is required to reimburse Salt River Project for all associated costs to relocate their irrigation system.

8. EVALUATION: Salt River Project self-performs construction services.

9. FINANCIAL IMPLICATIONS:

Cost: \$283,794
Savings: N/A
Long Term Costs: N/A

Fund Source:

<u>Acct. No.:</u>	<u>Fund Name:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Amount:</u>
415.3310.6517.0.6ST607	Impact Fees	Ocotillo Road (Arizona to McQueen)	Yes	\$283,794

10. PROPOSED MOTION: Move that Council award a design and construction contract to Salt River Project for the irrigation relocation for the Ocotillo Road Improvements from Arizona Avenue to McQueen Road Project, Project No. ST0808-302, in an amount not to exceed \$283,794, and authorize the Mayor to sign the contract documents after grant funding has been approved.

ATTACHMENTS: Location Map, Contract

APPROVALS

11. Requesting Department


Daniel W. Cook, Transportation Manager

12. City Engineer


Sheina Hughes, City Engineer

13. Department Head

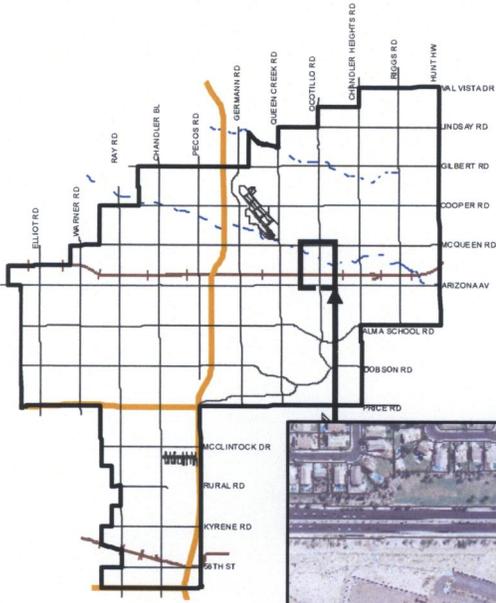

R.J. Zeder, Transportation & Development Director

14. City Manager


Rich Dlugas



OCOTILLO RD IRRIGATION RELOCATION PROJECT NO. ST0808-302



MEMO NO. CA12-168

PROJECT SITE





File: RD-82846

AGREEMENT FOR CONSTRUCTION OF SRP FACILITIES

This Agreement for construction, modification or relocation of SRP irrigation facilities ("Agreement") is entered into between the Salt River Valley Water Users' Association, a corporation organized under the laws of the Territory of Arizona, ("SRP"), and the City of Chandler, an Arizona municipal corporation ("City"). SRP and City may be referred to as "Party", or collectively as "Parties".

WHEREAS, City has requested that SRP irrigation facilities be modified or relocated to accommodate certain improvement or other development needs of City for Ocotillo Road, Arizona Avenue to McQueen Road located at Ocotillo Road, Arizona Avenue to McQueen Road, AND;

WHEREAS, SRP is willing to construct such accommodation, in whole or in part, or to permit the City to construct such accommodation in whole or in part ("Work") with certain conditions.

THEREFORE, in consideration of the matters described herein and of the mutual benefits and obligations set forth herein, SRP and City agree as follows:

- 1) SRP shall perform the Work listed on the Construction Bid Summary Section I, and optionally Sections II and III if offered by SRP and selected by the City. The Construction Bid Summary is attached hereto as Exhibit A. The Work is further detailed in SRP's Plans & Specifications, which are attached hereto as Exhibit B.
- 2) City shall select the desired option below by checking the box.
 - OPTION A - Work that must be performed by SRP. City shall pay SRP \$16,566 as set forth in Section I of Exhibit A.
 - OPTION B - Work that must be performed by SRP and optional pipeline construction by SRP for the entire scope of the project. City shall pay SRP \$283,794 as set forth in Sections I and II of Exhibit A.
 - OPTION C - Work that must be performed by SRP and optional pipeline construction by SRP for the Union Pacific Railroad crossing ONLY. City shall pay SRP \$109,408 as set forth in Sections I and III of Exhibit A.



- 3) The City shall perform any Work not included in the Work to be performed by SRP and comply with following conditions:
- a. City shall obtain such other licenses, permits, and agreements as required by any governing bodies having jurisdiction over the location which is the subject hereof.
 - b. Construction shall not commence until receipt of SRP's Notice to Proceed.
 - c. City shall notify the SRP inspector and request a dryup if necessary to perform the Work. SRP cannot assure a dryup, which may only be possible for brief periods and certain times of the year.
 - d. City shall be liable for any and all damage to the property of the United States of America (USA), SRP, the Salt River Project Agricultural Improvement and Power District, or any other party, caused by or arising out of its performance hereunder, or the performance of any of its contractors or subcontractors. To the extent permitted by law, City shall indemnify and hold harmless the USA, SRP and the Salt River Project Agricultural Improvement and Power District (Indemnitees), against and from any claims, actions, loss, damage, costs, expenses, or other liabilities for property damage or personal injuries in any way caused by or arising out of the City's performance hereunder, or the performance of its contractors or subcontractors. City's obligations to Indemnitees pursuant to this paragraph shall extend to and encompass all costs incurred by Indemnitees in defending against such claims or actions, and shall survive termination of this Agreement.
 - e. City warrants that construction shall conform to SRP plans and specifications and be free from defects in material and workmanship. If defect in materials or workmanship or other non-conformance with plans and specifications appears within one year from the date of SRP acceptance, and SRP so notifies City within a reasonable time after its discovery, City shall immediately correct the non-conformity at City's sole cost and expense within thirty (30) calendar days of notice by SRP. If City fails to correct the non-conformity within the time period specified by SRP, SRP may correct the non-conformity and City will pay for the cost of performing the Work.
 - f. In the event the City is unable to complete its Work, SRP shall have the right, but not be obligated, to complete the Work by whatever method SRP deems appropriate. This includes providing or obtaining any labor, materials or equipment and perform any part of the incomplete Work or Work that must be redone. The cost of completing the Work, along with



reasonable administrative charges or other damages caused by delays in completing the Work shall be charged to City.

- 4) Changes to the plans and specifications will only be made by SRP. SRP shall provide City with prior written notice of any changes in costs. City must agree in writing to any changes in cost to the City.
- 5) This Agreement shall be governed in all respects by the laws of the state of Arizona.
- 6) Either Party may terminate this Agreement at any time by providing thirty (30) days written notice to the other Party. In the event the City desires to terminate this Agreement prior to the completion of SRP's work, City shall reimburse SRP for the actual costs incurred as well as reasonable costs required to restore SRP's facilities.
- 7) If City's sub-contractor(s) file a lien against the premises where the Work and services are being performed, City shall, at its own expense, promptly take any and all action necessary to cause any such lien to be released or discharged. If City does not satisfy the lien in a prompt manner, SRP may satisfy the amount of the lien and then City shall reimburse SRP for the amounts paid in settling the lien.
- 8) In the event of dispute involving the terms of this Agreement or an allegation of material breach by either Party, the Parties reserve all rights and remedies, arising by law or equity, but shall waive any right to demand a trial by jury in an action commenced in court with respect to any legal proceeding arising out of or relating to this Agreement.
- 9) This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511.
- 10) This Agreement is subject to the provisions of ARIZ. REV. STAT. § 42-17106.



11) Notices:

If to City:
City of Chandler
Ms. Lori Greco
P. O. Box 4008
Mail Stop 410
Chandler, AZ 85244-4008

If to SRP:
SRP
Attn: Bob Larchick
Water Engineering, MS PAB 106
P.O. Box 52025
Phoenix, Arizona 85072-2025

- 12) This Agreement is binding upon the Parties hereto, their respective successors and assigns.
- 13) To the extent applicable under ARIZ. REV. STAT. § 41-4401, SRP and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23- 214(A). SRP's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.
- 14) All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to SRP in connection with this Agreement is confidential, proprietary information owned by the City. Except as specifically provided in this Agreement, SRP shall not disclose data generated in the performance of the services to any third person without the prior written consent of the City, or its designee.
- 15) In the event there is a breach of this Agreement, the prevailing Party to litigation shall be entitled to its reasonable attorney's fees and court costs. It is further understood and agreed that in the event any dispute arises regarding this Agreement or the terms and conditions hereof, the sole venue for litigation regarding this Agreement shall be in the Courts of Maricopa County, Arizona.
- 16) Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, SRP certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or 35-393, as applicable. If



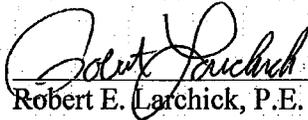
the City determines that SRP submitted a false certification, the City may impose remedies as provided by law including terminating this Agreement.

- 17) This Agreement represents the entire agreement of the Parties and supersedes all negotiations, representations, prior discussions or preliminary agreements between the Parties. No statements, warranties or representations of any kind not created in this Agreement shall in any way bind the Parties. This Agreement can only be changed or modified by a writing signed by all of the Parties hereto.
- 18) No term or provision of this Agreement that is determined by a court of competent jurisdiction to be invalid or unenforceable shall affect the validity or enforceability of the remaining terms and provisions of this Agreement. Any term found to be invalid or unenforceable shall be deemed as severable from the remainder of the Agreement.
- 19) This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement. The Parties agree that no individual performing under this Agreement on behalf of SRP will be considered a City employee, and that no rights of City civil service, City retirement or City personnel rules shall accrue to such individual. SRP shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such individuals and shall save and hold harmless the City with respect thereto.
- 20) SRP shall comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes, and regulations that are, or become applicable to this Agreement. If a subsequently enacted law imposes substantial additional costs on SRP, a request for an amendment may be submitted.
- 21) This Agreement is in the nature of a personal services agreement and SRP shall have no power to assign its rights and obligations under this Agreement without the prior written consent of the City. Any attempt to assign without such prior written consent shall be void.
- 22) This Agreement is may be canceled by City for a conflict of interest pursuant to Arizona Revised Statutes §38-511.



IN WITNESS HEREOF, each Party has caused the execution of this Agreement by the undersigned, who is vested with authority to bind such Party to the terms and conditions herein.

“SRP”
Salt River Valley Water Users’
Association, an Arizona corporation



Robert E. Larchick, P.E.
Director, Water Engineering

02/13/2012
Date Signed

“City”
City of Chandler, an Arizona
municipal corporation

City Representative

Title of Representative

Date Signed

APPROVED AS TO FORM

CITY ATTORNEY GAB