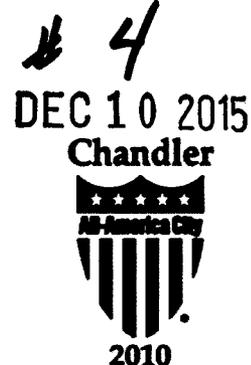




Chandler · Arizona
Where Values Make The Difference



MEMORANDUM MUNICIPAL UTILITIES - MEMO NO. MUA16-015

DATE: DECEMBER 10, 2015

TO: MAYOR AND COUNCIL

THRU: MARSHA REED, ACTING CITY MANAGER *mr*
 NACHIE MARQUEZ, ASSISTANT CITY MANAGER *nm*

FROM: GREGG CAPPS, ACTING MUNICIPAL UTILITIES DIRECTOR *Dwe*

SUBJECT: RESOLUTION NO. 4888 AUTHORIZING EXECUTION OF THE LAND USE
 LICENSE AGREEMENT BETWEEN THE CITY AND THE SALT RIVER
 PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT
 AND AUTHORIZING THE MUNICIPAL UTILITIES DIRECTOR TO
 EXECUTE ANY OTHER DOCUMENTS AND TO TAKE SUCH OTHER
 ACTIONS AS ARE NECESSARY TO CARRY OUT THE INTENT OF THIS
 RESOLUTION

RECOMMENDATION: Staff recommends City Council pass and adopt Resolution No. 4888, authorizing execution of the Land Use License Agreement between the City and the Salt River Project Agricultural Improvement and Power District and authorizing the Municipal Utilities Director to execute any other documents and to take such other actions as are necessary to carry out the intent of this Resolution.

BACKGROUND AND DISCUSSION: In 1902, the Salt River Project Valley Water Users' Association was formed to partner with the United States Bureau of Reclamation (USBR) to construct the Salt River Project (SRP) dams and water delivery system. As part of the water system, SRP installed several hundred water wells throughout its service area. In 1994, Chandler and SRP agreed to the Water Delivery and Use Agreement (WDUA), allowing Chandler to use specific SRP wells to provide potable water to its residential and commercial/industrial water customers. Chandler is currently using seven SRP wells. These SRP wells are located on land owned by the USBR. The USBR's policy requires a land use license to use the SRP wells. Chandler worked with several other Valley cities and SRP staff to develop a Land Use License Agreement which meets the USBR's requirements. The Land Use License Agreement allows Chandler to use the USBR land and clarifies what materials are allowed on the SRP well sites, as well as the roles and responsibilities of Chandler, SRP, and the USBR. It also provides the parties with flexibility to agree to the City's use of additional SRP well sites in the future.

FINANCIAL IMPLICATIONS: The City is required to pay a fee of one dollar (\$1.00) to SRP, in consideration, for the Land Use License Agreement.

PROPOSED MOTION: Move City Council pass and adopt Resolution No. 4888, authorizing execution of the Land Use License Agreement between the City and the Salt River Project Agricultural Improvement and Power District and authorizing the Municipal Utilities Director to execute any other documents and to take such other actions as are necessary to carry out the intent of this Resolution.

Attachments: Resolution No. 4888
SRP Land Use License
Location Map

RESOLUTION NO. 4888

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA APPROVING AND AUTHORIZING EXECUTION OF THE LAND USE LICENSE AGREEMENT BETWEEN THE CITY AND THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT AND AUTHORIZING THE MUNICIPAL UTILITIES DIRECTOR TO EXECUTE ANY OTHER DOCUMENTS AND TO TAKE SUCH OTHER ACTIONS AS ARE NECESSARY TO CARRY OUT THE INTENT OF THIS RESOLUTION

WHEREAS, on December 22, 1994 the City of Chandler and the Salt River Valley Water Users' Association ("Association") entered a Water Delivery and Use Agreement ("1994 Agreement") whereby City may use certain Association-owned wells to deliver water within the City's service area; and

WHEREAS, such wells are located on lands under federal jurisdiction and are thereby subject to federal use authorization requirements; and

WHEREAS, Salt River Valley Water Users' Association is the agent for the United States and the Salt River Project Agricultural Improvement and Power District ("District"); and

WHEREAS, the District agrees to authorize City to enter such well sites and to install, operate, maintain and remove water control and pump equipment for the purpose of connecting City's water distribution system to certain agreed-upon well sites of the District.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Chandler, Arizona, as follows:

Section 1. The City Council hereby authorizes, approves and directs the Mayor to execute on behalf of the City, the Land Use License Agreement Between the City of Chandler and the Salt River Project Agricultural Improvement and Power District.

Section 2. That the City's Municipal Utilities Director or his designee is hereby authorized and directed to execute any other documents and take such other actions as are necessary to carry out the intent of this Resolution.

Section 3. That the various City officers and employees are hereby authorized and directed to perform all acts necessary to give effect to this Resolution.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this _____ day of _____, 2015.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY *CAF*

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4888 was duly passed and adopted by the City Council of the City of Chandler, Arizona at a regular meeting held on the ____ day of _____, 2015, and that a quorum was present thereat.

City Clerk

**PLEASE SIGN AND
RETURN TO SRP**

WHEN RECORDED MAIL TO:

SALT RIVER PROJECT

Land Department/PAB350

P.O. Box 52025

Phoenix, Arizona 85072-2025

Note: This instrument is exempt from the real estate transfer fee and affidavit of legal value required under A.R.S. Sections 11-1132 and 11-1133 pursuant to the exemptions set forth in A.R.S. Sections 11-1134(A)(2) and (A)(3).

LAND USE LICENSE

Maricopa County

R/W No. Agt.

WSBD C/M

For the consideration of One (\$1.00) Dollar and other valuable considerations, **SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**, an agricultural improvement district organized and existing under the laws of the State of Arizona, Licensor, hereby grants to the **CITY OF CHANDLER, an Arizona municipal corporation**, Licensee, a non-assignable, non-possessory, and non-exclusive Land Use License ("License") to enter upon and use the real property described in Section 4, which is all situated in the County of Maricopa, State of Arizona ("Licensed Property").

1. Licensee is permitted to use the Licensed Property for ingress thereto and egress therefrom and for the installation, operation, maintenance, and/or removal of Licensee-owned equipment and materials which include, but are not limited to, water treatment equipment and chemicals, discharge piping, electrical cabinets and infrastructure, control equipment, and pump valves and meters, for the purpose of connecting the Licensee's water distribution system to the Licensor's wellsite. This License supersedes and replaces all previous licenses between the parties for the Licensed Property entered into solely for the purpose set forth in this Section 1.

2. Rights of the United States.

2.1 This License is subject to the paramount rights of the United States of America (“United States”) in and to the Licensed Property, to all applicable federal, state, and local laws and regulations, Executive Orders, and federal Reclamation laws, regulations, policies, directives, and standards, and to all relevant agreements existing and to be made between and among the United States, the Salt River Valley Water Users’ Association (“Association”) and Licensor regarding the management, care, operation and maintenance of the Salt River Reclamation Project, of which the Licensed Property is a part. Association is the agent for Licensor.

2.2 In accordance with United States Bureau of Reclamation Directives and Standards, LND 08-01, Section 11(N), the United States reserves the right of its officers, agents, and employees at all times to have unrestricted access and ingress to, passage over, and egress from all of said lands, to make investigations of all kinds, dig test pits and drill test holes, to survey for and construct reclamation and irrigation works and other structures incident to Federal Reclamation Projects, or for any purpose whatsoever. The United States will make every reasonable effort to keep damages to a minimum.

3. This License is also subject to, and governed by, that certain agreement between Association and Licensee captioned as the Water Delivery and Use Agreement (“WDUA”) executed on the 14th day of December, 1994. In the event of any conflict between this License and the WDUA, the WDUA shall control. This License is also subject to all prior use, activities, and operating agreements between the parties related to the Licensed Property not entered into solely for the purpose set forth in Section 1 and to those specific agreements listed on Exhibit A of this License. The Authorized Representatives, as appointed in accordance with the WDUA, may add or delete specific agreements listed on Exhibit A.

4. The Licensed Property, which may be one or more individual parcels, is depicted on Exhibit B. The Authorized Representatives may agree to add or delete parcels, or amend descriptions of parcels, listed on Exhibit B.

5. This License is a “use authorization” as that term is used in the Code of Federal Regulations, Title 43, Part 429, and Licensor affirms it is authorized to issue a use authorization in accordance with 43 C.F.R. § 429.5.

6. This License shall be subject to the following additional conditions:

6.1 Licensor shall retain the right to make any use of the Licensed Property not inconsistent with Licensee’s use, including but not limited to the right to construct, reconstruct, operate and maintain its existing and future, pump, mechanical, electrical and telecommunication facilities within the Licensed Property.

- 6.2 In accordance with 43 C.F.R. § 429.28(a)(2), the United States, acting through Reclamation, Department of the Interior, reserves rights to construct, operate, and maintain public works now or hereafter authorized by the Congress without liability for termination of the License or other damage to Licensee's activities or facilities.
- 6.3 Use of the Licensed Property, including, but not limited to, the installation, operation, relocation, or removal of equipment or the maintenance and inspection of Licensee's equipment located on the Licensed Property, shall be consistent with and subject to the terms and conditions of the WDUA.
- 6.4 Licensee's and Licensor's use of herbicides and other regulated substances, and Licensor's use of pesticides, on the Licensed Property shall comply with all applicable federal, state, and local requirements.
- 6.5 Licensee shall not use or permit the use of any pesticides on Licensed Property.
- 6.6 Prior to undertaking excavation work on the Licensed Property, Licensee shall satisfy the applicable notification requirements of A.R.S. § 40-360.22.
- 6.7 Licensor and Licensee shall comply with applicable OSHA and worker safety requirements when performing their respective activities on the Licensed Property.
- 6.8 Licensee shall immediately provide an oral notification to Reclamation's authorized official and/or Licensor of the discovery of any and all antiquities or other objects of archaeological, cultural, historic, or scientific interest on the Licensed Property. The Licensee shall follow up with a written report of its finding(s) to Reclamation's authorized official and Licensor within forty-eight (48) hours. Objects under consideration include, but are not limited to, historic or prehistoric ruins, human remains, funerary objects, and artifacts discovered as a result of activities under this License. Licensee shall immediately cease the activity in the area of discovery, make a reasonable effort to protect such discovery, and wait for written approval from Reclamation's authorized official and Licensor before resuming the activity. Protective and mitigative measures specified by Reclamation's authorized official and Licensor shall be the responsibility of Licensee.
- 6.9 Licensee agrees to indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other activities of Licensee.

- 6.10 Either party may terminate this License without cause upon not less than 360 days written notice, and this License is fully revocable at the discretion of the United States. The term of this License shall be twenty-five years from the date of execution and may be renewed upon the written agreement of the parties.
- 6.11 Upon the expiration, termination, or revocation of this License, Licensee shall remove all structures, equipment, or other improvements made by it from the Licensed Property at no cost to the United States or Licensor. Upon failure to remove any such improvements within one hundred and twenty (120) days of the expiration, termination, or revocation, any remaining improvements shall, at the option of the United States or Licensor, be removed or become the property of the United States or Licensor. Licensee shall pay all expenses of the United States or Licensor, or their assigns, related to the removal of such improvements. Should, however, the United States or Licensor determine that there is a project or public need for specific structures and/or equipment to remain in place, Licensee shall be compensated the market value of such improvements as determined by an appraisal prepared by the United States Secretary of the Interior.
7. Hazardous Materials
- 7.1 Licensee may not allow contamination or pollution of Federal lands, waters or facilities for which Licensee has the responsibility for care, operation, and maintenance by its employees or agents and shall take reasonable precautions to prevent such contamination or pollution by third parties. Substances causing contamination or pollution shall include but are not limited to hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants. Under this Section 7, Licensor and the United States, and their officers, employees, and agents, shall not be considered for any purpose to be third parties or Licensee's employees or agents.
- 7.2 Licensee shall comply with all applicable federal, state, and local laws and regulations, and Reclamation policies and directives and standards, existing or hereafter enacted or promulgated, concerning any hazardous material that Licensee uses, produces, transports, stores, or disposes of on or in Federal lands, waters or facilities.
- 7.3 "Hazardous material" means any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq., and the regulations promulgated pursuant to that Act.

- 7.4 Upon discovery of any event which may or does result in contamination or pollution of federal lands, waters or facilities, Licensee shall initiate any necessary emergency measures to protect health, safety and the environment and shall report such discovery and full details of the actions taken to Licensor. Reporting may be within a reasonable time period. A reasonable time period means within twenty-four (24) hours of the time of discovery if it is an emergency or by the first working day if it is a non-emergency. An emergency is any situation that requires immediate action to reduce or avoid endangering public health and safety or the environment. Nothing in this Subsection 7.4 shall be construed to impose any duty or obligation on Licensee except to initiate necessary emergency measures to protect health, safety and the environment and to report such discovery and full details of the actions taken to Licensor.
- 7.5 Violation of Subsections 7.1 through 7.3 require immediate corrective action by Licensee and shall make Licensee liable for the cost of full and complete remediation and/or restoration of any federal resources or facilities that are adversely affected as a result of the violation.
- 7.6 Licensee agrees to include the provisions contained in Subsection 7.1 through 7.5 of this Section in any subcontract or third party contract it may enter into pursuant to this License; provided, nothing in this Section shall be construed so as to contradict or supersede any of the terms, conditions, or responsibilities related to Hazardous Materials as set forth in any of the agreements listed on Exhibit A.
- 7.7 Licensor shall ensure that Reclamation provides information necessary for Licensee, using reasonable diligence, to comply with the provisions of this Section.

8. Each provision of this License shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this License shall be deemed or determined by competent authority to be invalid or prohibited hereunder, such provision shall be ineffective and void only to the extent of such invalidity or prohibition, but shall not be deemed ineffective or invalid as to the remainder of such provision or any other remaining provisions, or of the License as a whole.

9. No Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon, pursuant to 41 U.S.C. § 22.

10. Any activity deemed to be illegal on the Licensed Property will be cause for immediate termination of this License.

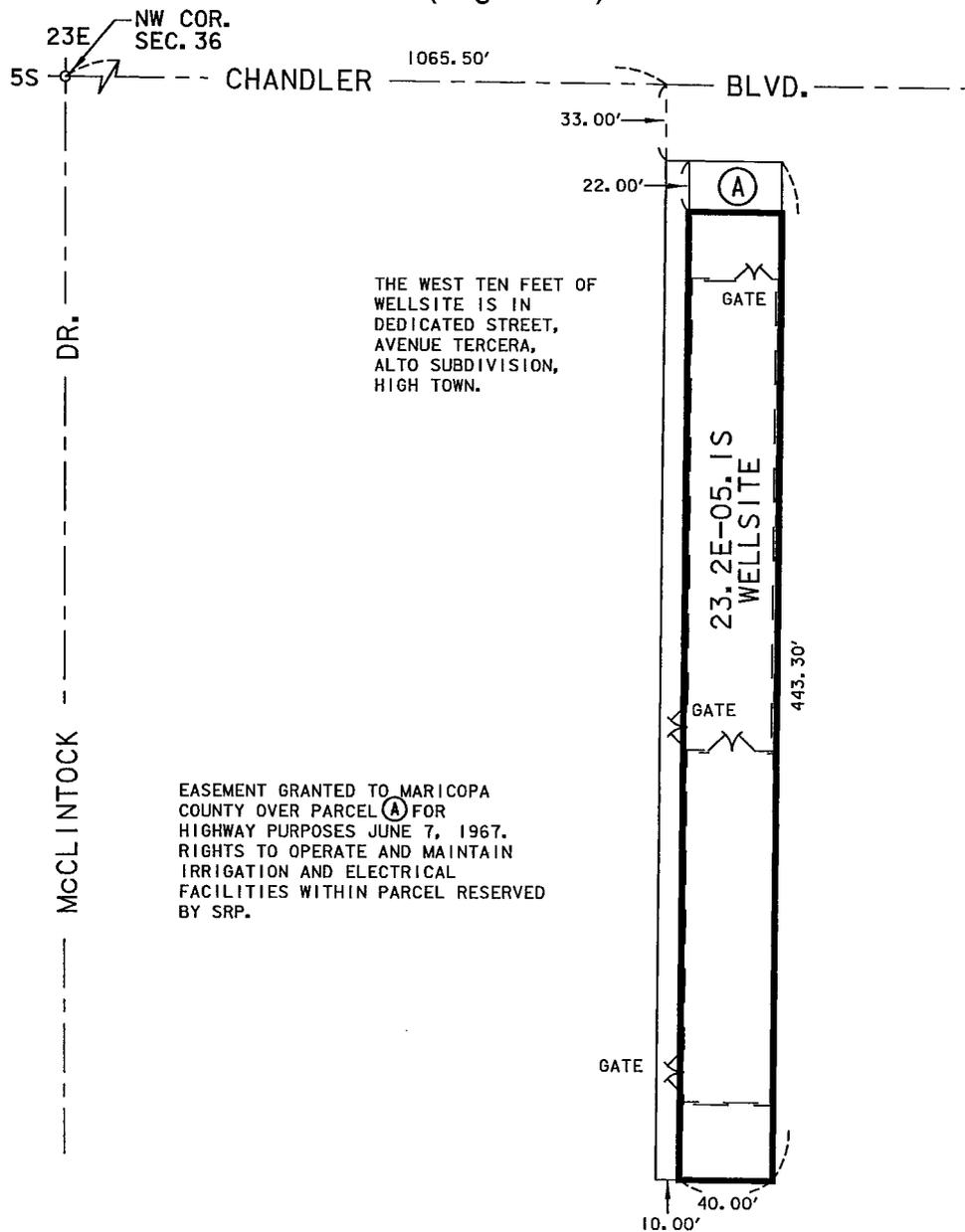
1. October 13, 2005 Letter to Robert Mulvey, P.E., Assistant Director of Municipal Utility Division, City of Chandler, from Paul A. Cherrington, Manager, Salt River Project, re: City of Chandler's Installation of An Arsenic Treatment System at SRP Well 23.2E-5.1S (The Hightown Well) Chandler City Project Number: WA0404-301.
2. April 10, 2006 Letter to Robert Mulvey, P.E., Assistant Director Municipal Utilities Division, City of Chandler, from Paul A. Cherrington, Manager, Salt River Project Re: City of Chandler's Installation of An Arsenic Treatment System At SRP Well 25.5E-4.7S (The Arrowhead Well) Chandler City Project Number: WA0404-303.

Exhibit B

“**Licensed Property**,” as used in this License, is limited to the real property within the fenced, well-enclosure area around each of following wells, which wells are located on the respective map marked Exhibit B-1:

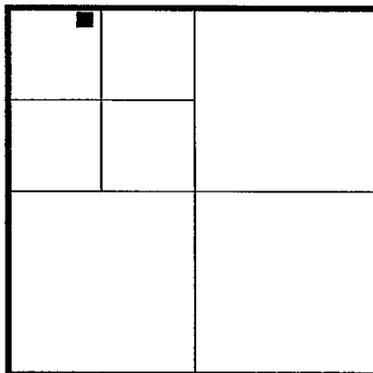
SRP Designation	Chandler Name	ADWR Well Registration Number
25.5 E4.7S	Arrowhead	55-617839
26.0E 2.0S	Elliot	55-617096
27.5E 2.9S	Hahn	55-565549
23.2E 5.1S	Hightown	55-557110
26.3E 3.5 S	Knox	55-617838
25.3E 5.6S	Pennington	55-565550
24.0E 3.0S	Warner	55-617856

EXHIBIT B-1 (Page 4 of 7)



NOTE: NO BEARINGS FOUND ON ANY REF. DWG.

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 R/W FILE NO. : 992
 REF. DWG. NO. : B-483-56.1

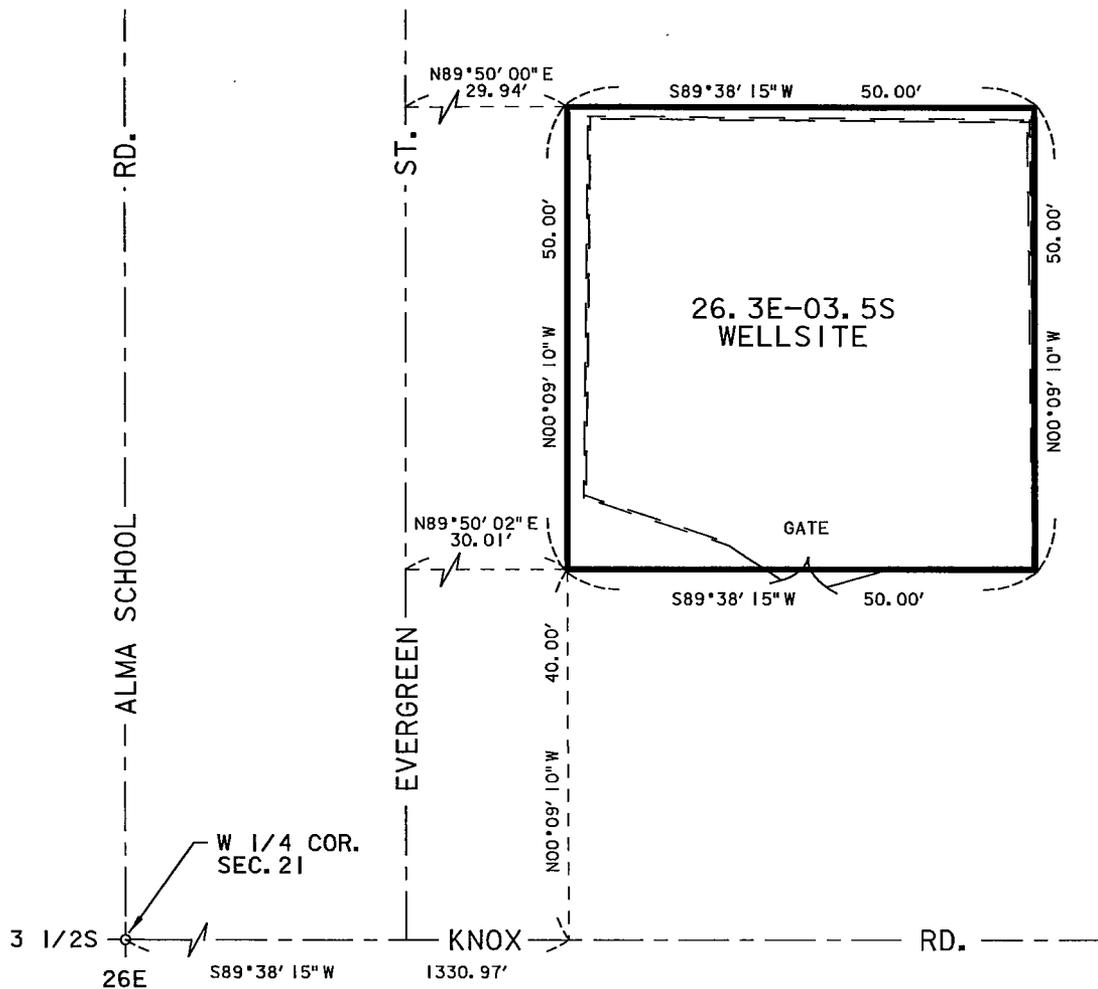


SECTION 36

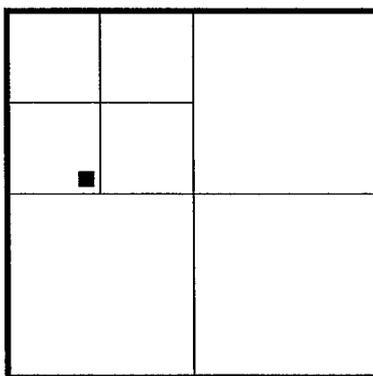


SCALE: 1" = 80'
 SEC. 36 T1S R4E

EXHIBIT B-1 (Page 5 of 7)

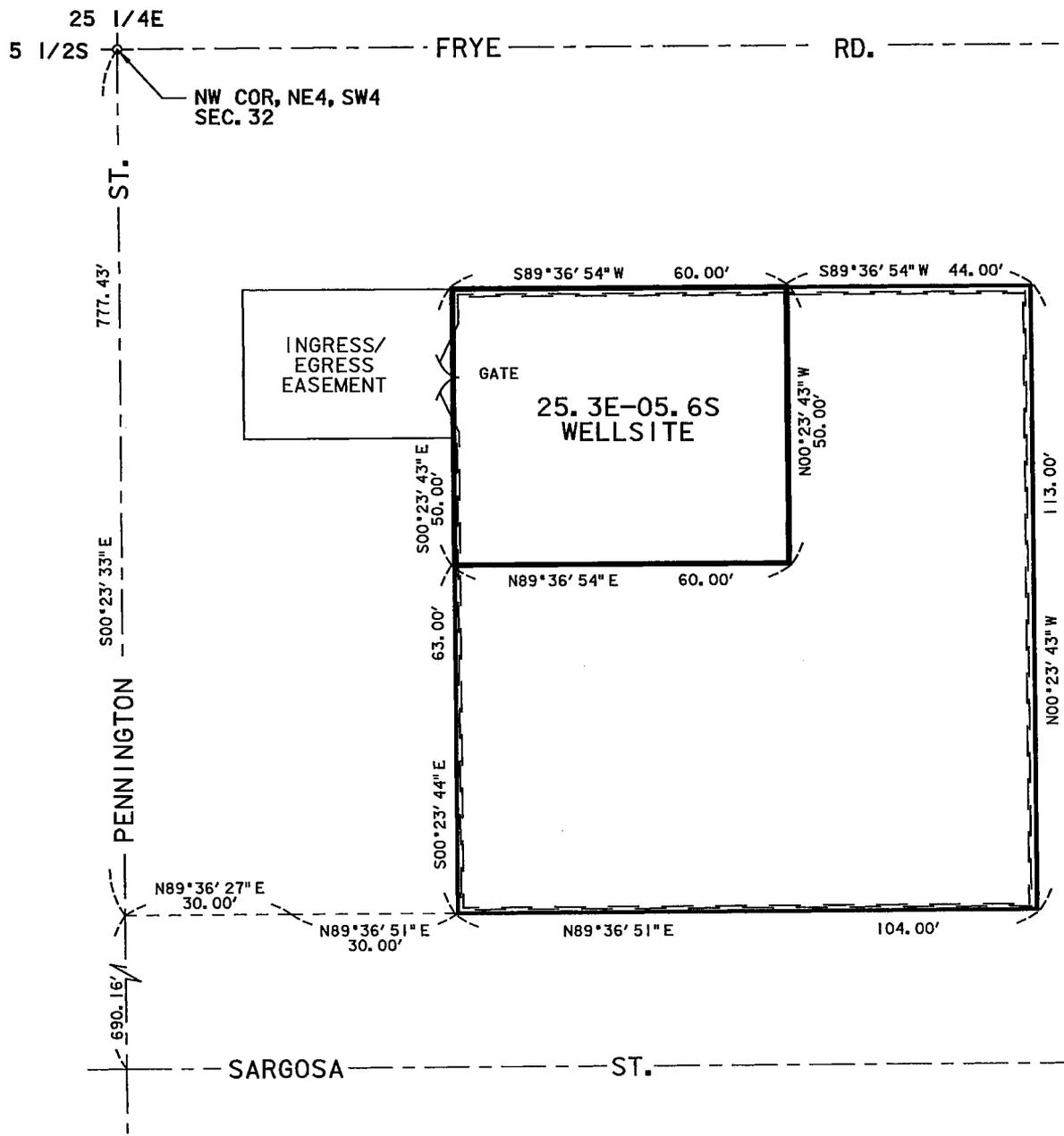


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 REF. DWG. NO. : B-483-100.1

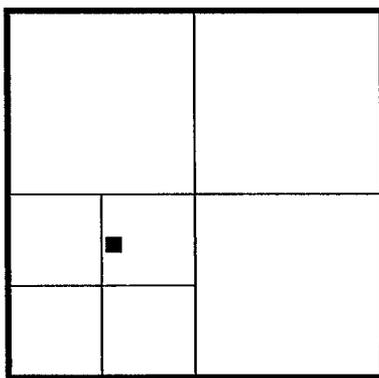


SCALE: 1" = 20'
 SEC. 21 T1S R5E

EXHIBIT B-1 (Page 6 of 7)



C. P. R. NO. : 14511
 R/W FILE NO. : NONE
 REF. DWG. NO. : B-483-417.1
 PARCEL NO. : 303-23-988B & 988E,
 2000-0472324

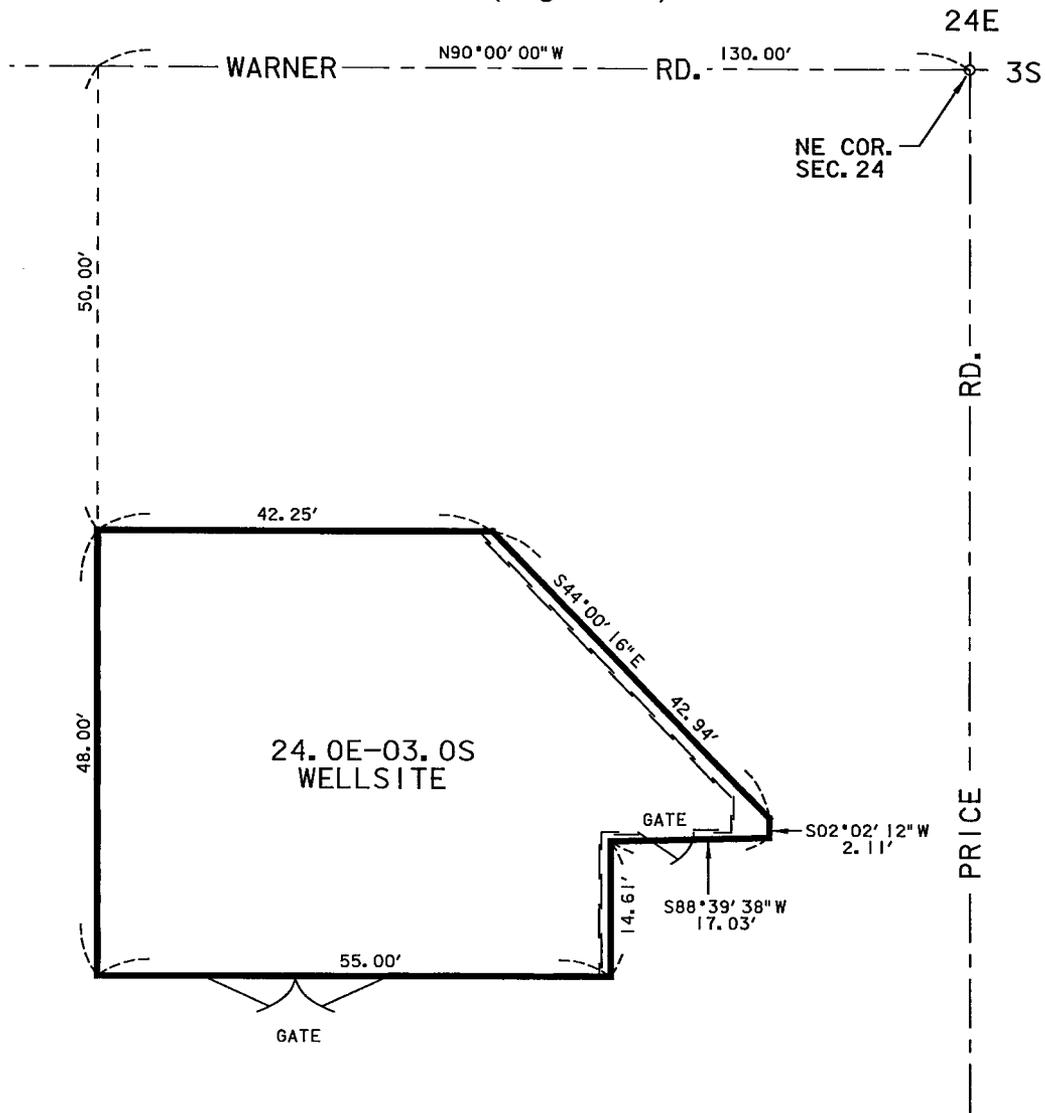


SECTION 32

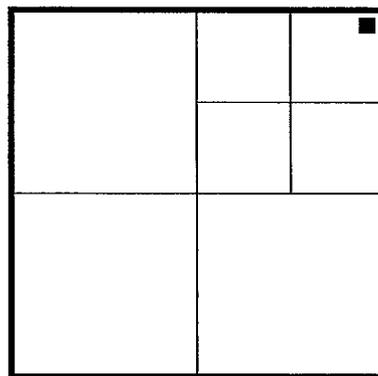


SCALE: 1" = 30
 SEC. 32 T1S R5E

EXHIBIT B-1 (Page 7 of 7)



C. P. R. NO. : 22650
 R/W FILE NO. : 594
 REF. DWG. NO. : B-483-11.1



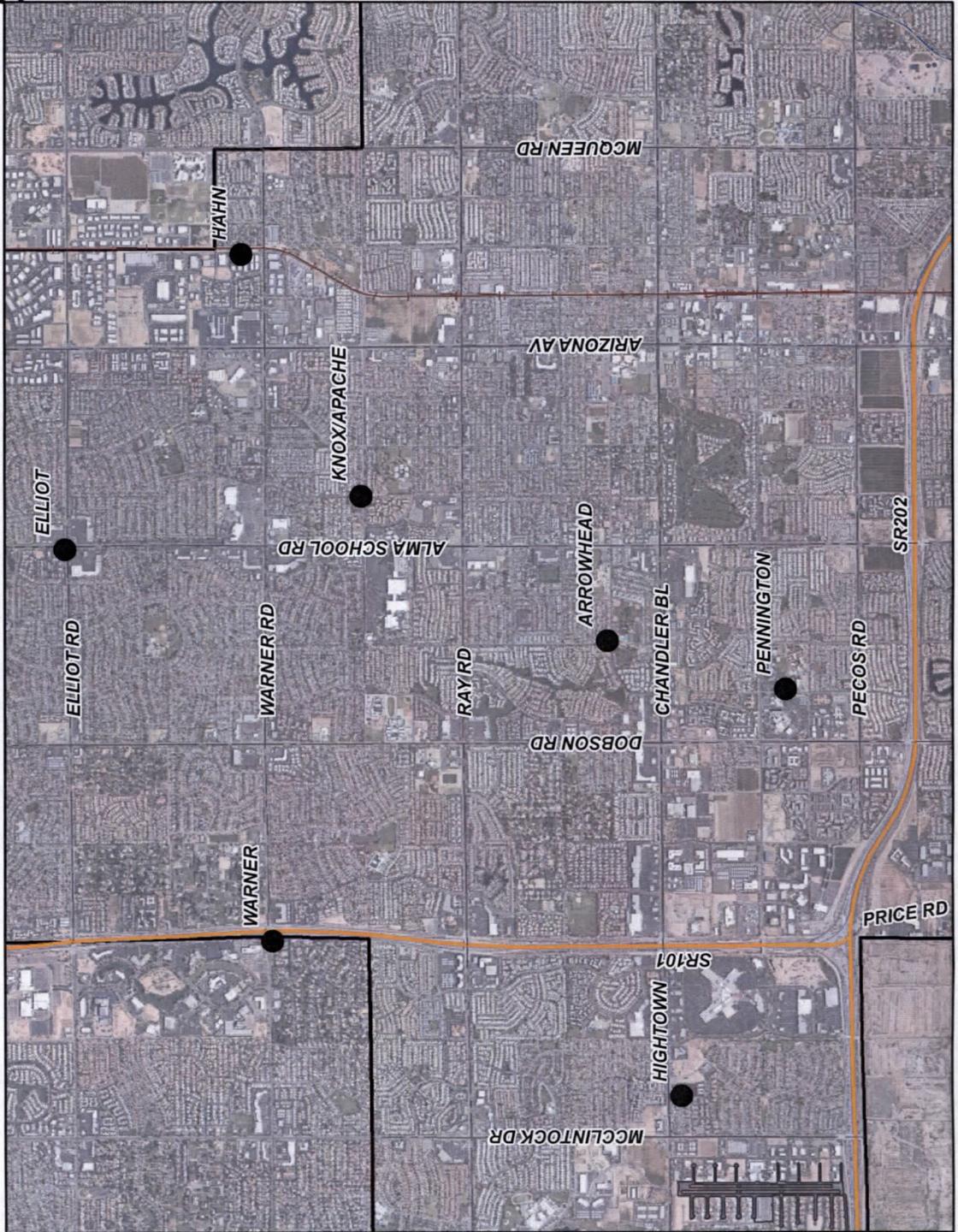
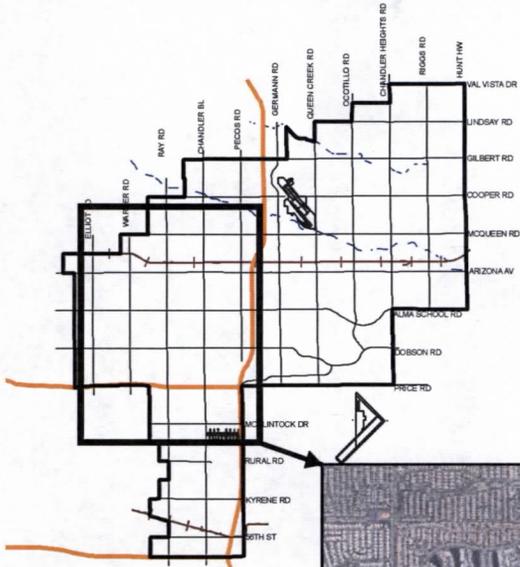
SECTION 24



SCALE: 1" = 20'
 SEC. 24 T1S R4E



**AUTHORIZING EXECUTION OF THE LAND USE
LICENSE AGREEMENT BETWEEN THE CITY
AND THE SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT**



MEMO NO. MUA16-015

RESOLUTION NO. 4888

**● SALT RIVER PROJECT
WELLS**

