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OCT 13 2016



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MEMORANDUM Transportation & Development – Memo No. RE17-014

DATE: OCTOBER 13, 2016

TO: MAYOR AND COUNCIL

THRU: MARSHA REED, CITY MANAGER *MR*
 R. J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR *RJZ*
 DANIEL W. COOK, CITY ENGINEER *DC*

FROM: ERICH KUNTZE, REAL ESTATE MANAGER *SS for*

SUBJECT: RESOLUTION NO. 4981 AUTHORIZING ENTERING INTO A FACILITY
 RELOCATION AGREEMENT BETWEEN THE CITY OF CHANDLER AND
 SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER
 DISTRICT (SRP) AT ALMA SCHOOL ROAD AND GALVESTON STREET
 FOR A SRP AESTHETICS PROJECT

RECOMMENDATION: Staff recommends City Council pass and adopt Resolution No. 4981 authorizing entering into a Facility Relocation Agreement between the City of Chandler and Salt River Project Agricultural Improvement and Power District (SRP) at Alma School Road and Galveston Street for a SRP aesthetics project.

BACKGROUND/DISCUSSION: On September 11, 2014, City Council approved Resolution No. 4801 consenting to Municipal Aesthetics Program Funding Agreements with Salt River Project (SRP). This approval includes the placement of some of SRP's electric facilities underground at Alma School Road and Galveston Street. Staff has confirmed that SRP does not have prior rights for these facilities. The Facility Relocation Agreement (Agreement) is a standard accommodation between SRP and the City for these aesthetics projects. SRP will be doing this work using aesthetics program funds.

Staff has reviewed the Agreement and legal descriptions and recommends that Council authorize entering into the Agreement.

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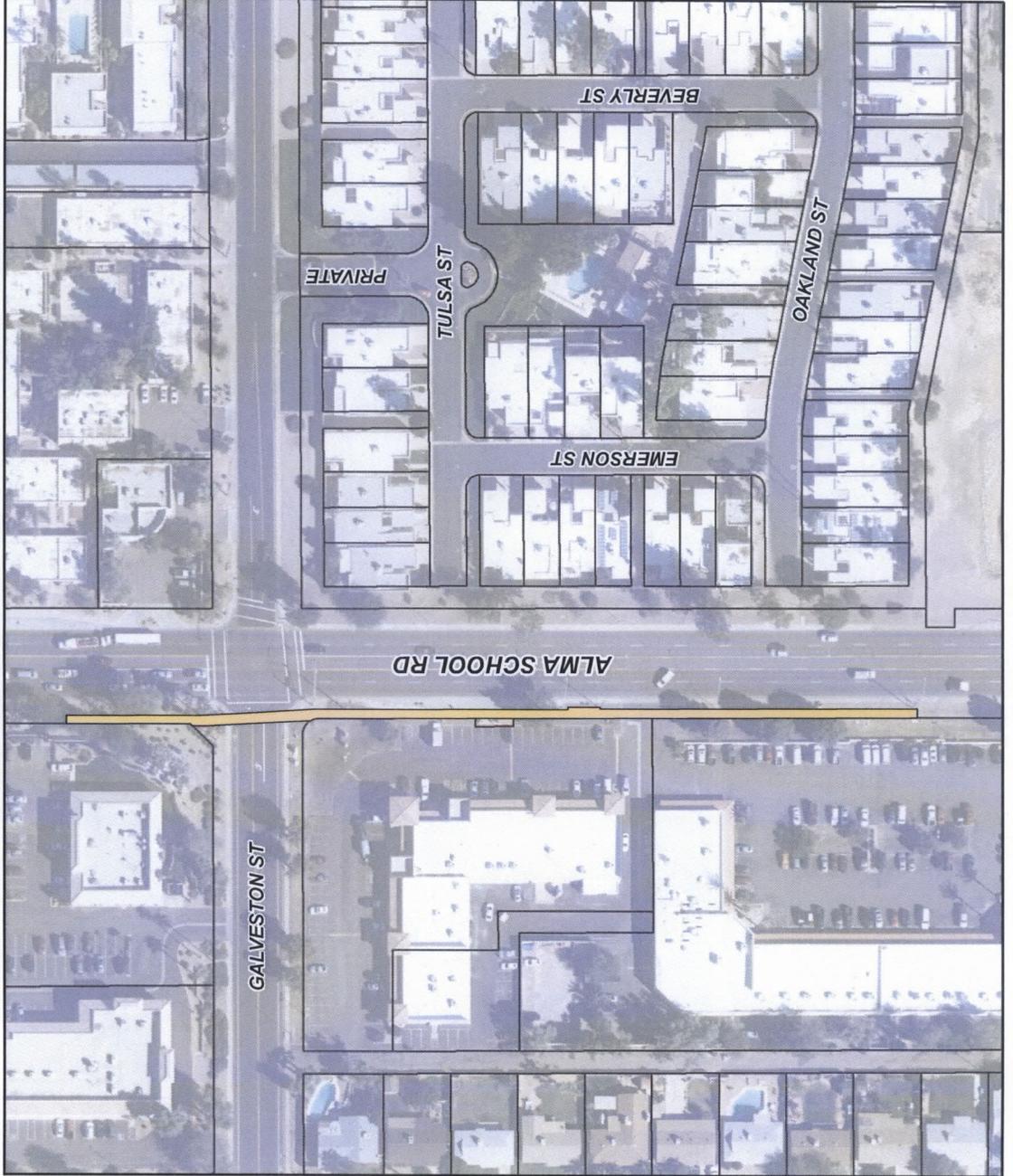
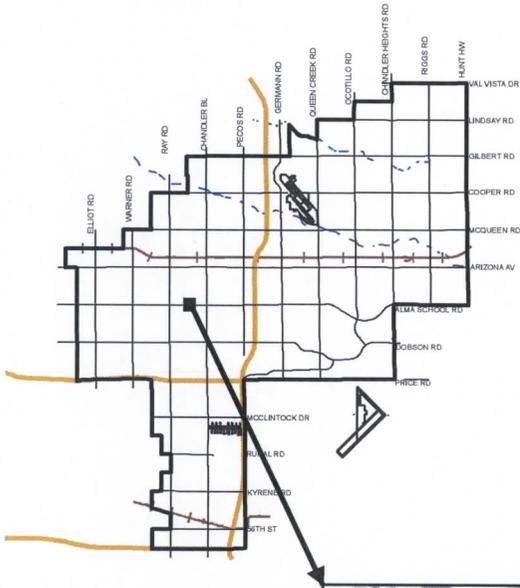
FINANCIAL IMPLICATIONS: Costs associated with the relocation of the SRP facilities are to be paid by SRP as part of their aesthetics program.

PROPOSED MOTION: Staff moves City Council pass and adopt Resolution No. 4981 authorizing entering into a Facility Relocation Agreement between the City of Chandler and Salt River Project Agricultural Improvement and Power District (SRP)) at Alma School Road and Galveston Street for a SRP aesthetics project.

Attachments: Location/Site Map
Resolution No. 4981



**AUTHORIZING AND APPROVING ENTERING INTO A
 FACILITY RELOCATION AGREEMENT BETWEEN
 THE CITY OF CHANDLER & SALT RIVER PROJECT
 AGRICULTURAL IMPROVEMENT AND POWER
 DISTRICT (SRP) AT ALMA SCHOOL RD & GALVESTON ST
 FOR AN SRP AESTHETICS PROJECT**



MEMO NO. RE17-014

RESOLUTION NO. 4981

EASEMENT



RESOLUTION NO. 4981

A RESOLUTION OF THE COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING ENTERING INTO A FACILITY RELOCATION AGREEMENT BETWEEN THE CITY OF CHANDLER AND SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT (SRP) AT ALMA SCHOOL ROAD AND GALVESTON STREET FOR A SRP AESTHETICS PROJECT .

WHEREAS, the City is agreeable to entering into a Facility Relocation Agreement (Agreement) with SRP for SRP facilities located at Alma School Road and Galveston Street to accommodate a SRP aesthetics project at this location.

WHEREAS, SRP is willing to enter into said Agreement with the City of Chandler and to cover the cost of undergrounding its electrical facilities at this location;

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

Section 1. That the City Council of the City of Chandler, Arizona, is authorized to approve and enter into a Facility Relocation Agreement with Salt River Project Agricultural Improvement and Power District (SRP) for a SRP aesthetics project at Alma School Road and Galveston Street.

Section 2. That the Facilities Relocation Agreement shall be in the form and approved by the City Attorney and attached hereto as Exhibit "A".

Section 3. That the Mayor of the City of Chandler, Arizona, is hereby authorized to sign this Resolution and the Facilities Relocation Agreement accepting same on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this _____ day of _____, 2016.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4981 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2016, and that a quorum was present thereat.

CITY CLERK

APPROVE AS TO FORM

CITY ATTORNEY *GAB*

FACILITY RELOCATION AGREEMENT

IN CONNECTION WITH IMPROVEMENTS TO SRP FACILITIES PURSUANT TO THE
SRP MUNICIPAL AESTHETICS PROGRAM

Between

THE MUNICIPALITY OF CHANDLER

and

THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

The SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT ("SRP"), an agricultural improvement district organized and existing under the laws of the State of Arizona and _____, a municipal corporation, ("MUNICIPALITY") hereby enter into this AGREEMENT this _____ day of _____, 2016.

RECITALS:

A. In connection with aesthetics improvements to certain SRP Facilities ("EXISTING FACILITIES") which are integral to SRP's core business of water and power development, transmission and distribution, MUNICIPALITY desires the relocation of the EXISTING FACILITIES, either from on or above the land surface to below the surface or out of the current alignment, and SRP and MUNICIPALITY desire to ensure that, once relocated, the relocated facilities ("RELOCATED FACILITIES") will be secure in the new location as against future relocation as desired or required by MUNICIPALITY.

B. SRP and MUNICIPALITY agree that, irrespective of the nature or validity of rights held or asserted by SRP where the EXISTING FACILITIES are located, MUNICIPALITY shall provide the assurances herein to remediate costs to SRP and the USA associated with the need for future relocation of the RELOCATED FACILITIES, whether or not currently anticipated.

C. SRP is willing to accommodate the aesthetics improvements to the EXISTING FACILITIES, provided MUNICIPALITY shall reimburse SRP for any future cost of relocation of the RELOCATED FACILITIES and provide SRP with sufficient right or privilege on land suitable for the RELOCATED FACILITIES and on which MUNICIPALITY has the requisite authority to grant such a right or privilege, that is satisfactory to SRP.

NOW THEREFORE, the parties agree as follows:

1. This AGREEMENT is intended solely to address the obligations of the parties with respect to the provision of sufficient assurances to SRP regarding the stability and security of SRP's ability to rely on continued use of the RELOCATED FACILITIES without additional cost associated with the need for future movement of the RELOCATED FACILITIES.

2. MUNICIPALITY and SRP intend to enter into a separate agreement providing for the physical removal of the EXISTING FACILITIES and the design and construction of the RELOCATED FACILITIES and apportionment of costs for such work.

3. MUNICIPALITY warrants that it has the authority to grant, and hereby grants SRP, the right to use the land described more particularly in the attached Exhibit A "Legal Description" (NEW FACILITY SITE), which is made a part hereof, for the following purposes and subject to the following conditions:

- a) for the construction, installation, reconstruction, replacement, removal, repair, operation and maintenance of the EXISTING FACILITIES, consisting of irrigation pipeline(s) and irrigation turnout structure(s) or electric facilities and all other appliances and fixtures for use in connection therewith for the transmission and distribution of water or power, and for all other purposes connected therewith as SRP may now or hereafter deem convenient or necessary, together with the right of ingress and egress to and from the RELOCATED FACILITIES.
- b) The RELOCATED FACILITIES will subsequently be relocated at the request of MUNICIPALITY only if the NEW FACILITY SITE is required by MUNICIPALITY for authorized purposes that are incompatible with the RELOCATED FACILITIES. Upon notice of intent to relocate by MUNICIPALITY, SRP's right to occupy the NEW FACILITY SITE shall remain in effect until SRP's RELOCATED FACILITIES have been moved to a reasonable new location in a new area that meets with the standards set forth herein.

4. In the event SRP permanently abandons the NEW FACILITY SITE, all SRP's rights hereunder shall cease, except the right and obligation to remove any and all property placed upon the NEW FACILITY SITE within a reasonable time subsequent to such abandonment.

5. MUNICIPALITY warrants that it has good and sufficient title to the NEW FACILITY SITE, that MUNICIPALITY has legal authority and power to authorize SRP to construct its RELOCATED FACILITIES in the NEW FACILITY SITE and that the NEW FACILITY SITE is free and clear of any encumbrances, except such encumbrances as are acceptable to SRP and as are described on Exhibit B "List of Encumbrances". If SRP's RELOCATED FACILITIES must be relocated or modified due to the claim of any person to the NEW FACILITY SITE, MUNICIPALITY shall reimburse all of SRP's costs for such relocation or modification, and such relocation shall be in a reasonable new location if relocation is necessary.

6. The covenants and agreements herein set forth shall run with the land and be binding upon the NEW FACILITY SITE, and extend and inure in favor and to the benefit of and shall be binding on the heirs, administrators, executors, personal representatives, legal representatives, successors (including successors in ownership and estate), assigns and lessees of MUNICIPALITY and SRP.

7. Notwithstanding any of the aforesaid provisions, the rights granted herein shall be further subject to the following covenants, restrictions and conditions:

- a) MUNICIPALITY shall not construct, install or place, or grant a license or easement or any permit or other right allowing to be constructed, installed or placed any facility which unreasonably interferes with SRP's use of the RELOCATED FACILITIES. MUNICIPALITY shall submit design plans for any planned facility or improvement in the NEW FACILITY SITE to SRP for its prior review and comment.
- b) In the event any SRP repair, maintenance, replacement or installation of the RELOCATED FACILITIES will cause a disturbance or a disruption of any public street or paved roadway, SRP shall notify MUNICIPALITY, pursuant to existing practices. SRP shall provide for advance warning signs, barricades, flagmen, flares, and other devices when necessary to protect the roadway user as set forth in the "Manual on Uniform Traffic Control Devices" and any amendments and/or revisions thereto.
- c) In the event of any emergency, SRP shall have the immediate right to the use of any public street or paved roadway as necessary and appropriate to correct, repair, replace or reconstruct the RELOCATED FACILITIES affected by the emergency and notify MUNICIPALITY within a reasonable time thereafter.

8. MUNICIPALITY and SRP shall each release the other party and members of its governing bodies, directors, officers, employees, agents and representatives from any claim for damage, loss or cost, including reasonable attorneys' fees and litigation costs, arising from the party's use of the NEW FACILITY SITE unless caused by such party's breach of this Agreement, negligence or willful action.

9. Any disputes arising out of this Agreement, shall be subject to resolution by MUNICIPALITY and SRP through compromise, arbitration, or adjudication. The parties shall use arbitration, after exhausting all applicable administrative remedies, to resolve any disputes where the sole relief sought is monetary damages of one hundred thousand dollars (\$100,000) or less, exclusive of interest and costs. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association by an arbitrator mutually agreed upon by the parties.

10. The waiver by either party of any breach or failure to provide full performance under any of the terms or conditions of this Agreement shall not be construed as a waiver of any other term or condition, or of any subsequent breach of the same or any other term or condition.

11. Notices required to be given pursuant to this Agreement shall be delivered in person or by certified or first class United States mail, postage paid, or by facsimile to:

12. This Agreement, including any schedules, exhibits or attachments hereto, constitutes the entire agreement between the parties, and no understanding or obligation not expressly set forth herein shall be binding upon them. No modification, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by both parties.

13. This Agreement shall be governed by the laws of the State of Arizona without regard to conflicts of law principles. Any court proceeding regarding this Agreement shall be initiated and prosecuted in a state or federal court located in Maricopa County, Arizona.

14. This Agreement shall be recorded in the books and records of Maricopa County, Arizona, and shall be effective as to any interest in the NEW FACILITY SITE now owned or hereafter acquired by MUNICIPALITY, and shall be binding on any successors (including successors in ownership and estate), assigns and lessees of MUNICIPALITY, and any future owners and lessees of the NEW FACILITY SITE.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

EXHIBIT "A"
(Legal Description)
(NEW FACILITY SITE)

Exhibit A



MEMORANDUM

DATE: November 25th, 2014

MEMO TO: Paul Young, City of Chandler

MEMO FROM: Jayson Carpenter, Land Acquisitions Department, PAB 350

SUBJECT: Land Right Memorandum for SRP AMP #T2026320; T2041697; T2041696
CUE UE Alma School & Galveston Aesthetics

The purpose of this Memorandum is to identify the responsible party for the cost of relocating SRP facilities in the event that they are displaced by the above-referenced project and also to identify existing SRP Land Rights that must be maintained in the future. SRP has completed research of existing Facilities and Land Rights, the potential conflicts have been identified. Listed below is a summary of the research findings with respect to the various SRP facilities highlighted on the attached map.

- Facilities 1 – 3 are not protected by an SRP Easement. SRP does not hold a land right in this location. SRP is responsible for relocation costs. As long as facilities are relocated within a public right-of-way, SRP will not require a new easement. For facilities relocated with aesthetics funds, SRP will require relocation agreements.

Within the next 45 days, please review the documentation supplied by SRP with respect to the various facilities in question. If the City agrees with SRP's research findings and suggested course of action, please execute the Memorandum below where indicated.

If the City has additional information that may be relevant to this matter, please submit it to me in writing. SRP will review the information within 30 days from the date of the City's submittal and subsequently inform the City of SRP's final determination of the party responsible for the facility relocation costs.

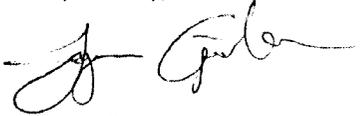
After the City has signed the Memorandum and the new location for the displaced facilities has been determined and accepted by SRP, the City will need to obtain new legal descriptions and parcel exhibit maps describing and depicting the new SRP easement areas. The legal descriptions and exhibits must be stamped and sealed by a registered land surveyor. The City may either request that SRP or another survey company perform this work. In the event that SRP performs the survey work, the City agrees to reimburse SRP for all costs incurred. Please let me know which way you would like to proceed.

Once the parcel exhibit maps and legal descriptions have been completed, the City will need to obtain the new land rights in favor of SRP using our standard form of easement.

Please note that if aesthetic funds are to be used to convert SRP facilities from overhead to underground, a relocation agreement will be drawn up for those facilities that were not previously protected by SRP Easement or PUE.

If you have any questions regarding this matter, please contact me at 602-236-3490 or by email at jayson.carpenter@srpnet.com.

Respectfully,



Jayson Carpenter
SRP Land Management Agent

City of Chandler

Agreed and Acknowledged:

By: _____ Date: _____

Print Name: _____

Title: _____

c. Jolie Donahue, SRP Designer