

#13

OCT 30 2008



Chandler • Arizona
Where Values Make The Difference

MEMORANDUM

Public Works Engineering Council Memo CA09-049

DATE: OCTOBER 30, 2008

TO: MAYOR & COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER
PAT MCDERMOTT, ASSISTANT CITY MANAGER
R.J. ZEDER, PUBLIC WORKS DIRECTOR
SHEINA HUGHES, ASSISTANT PUBLIC WORKS DIRECTOR
CITY ENGINEER

FROM: LORI GRECO, DEVELOPMENT PROJECT ADMINISTRATOR

SUBJECT: RESOLUTION NO.4237 ACCEPTING A NO COST LICENSE AGREEMENT RIGHT-OF-WAY LICENSE FOR LANDSCAPE AND MAINTENANCE FOR A 20-FOOT STRIP OF UNITED STATES OF AMERICA'S (USA) PROPERTY, LOCATED IN AN OPEN SPACE AREA ADJACENT TO ARIZONA REFLECTION SUBDIVISION

RECOMMENDATION: Staff recommends Council pass and adopt Resolution No. 4237 accepting a no cost license agreement Right-of-Way License for landscape and maintenance for a 20-foot strip of United States of America's (USA) property located in an open space area adjacent to Arizona Reflection subdivision.

BACKGROUND AND DISCUSSION: In order to finish Germann Road Improvements (Dobson Road to Arizona Avenue), it is necessary for the City to accept an Salt River Project (SRP) no cost Right-of-Way License for landscape and maintenance for a 20-foot strip of United States of America's (USA) property, located in an open space area adjacent to Arizona Reflection subdivision. SRP agreed to grant a Right-of-way License to the City for this purpose, at no charge, providing that the City accepts the SRP's License, which includes language that requires the City to indemnify, release and hold harmless SRP and the USA. The City would be responsible for landscape and maintenance of a 20-foot strip of USA fee property should the Arizona Reflection Homeowner's Association (HOA) cease to operate or default on landscape provisions within the Right-of-Way License. This license covers a 20-foot wide strip of land along the north side of Willis Road running approximately 241 feet west of Hamilton Street and contains approximately 4,820 square feet of property.

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FINANCIAL IMPLICATIONS:

There is no cost associated with this License.

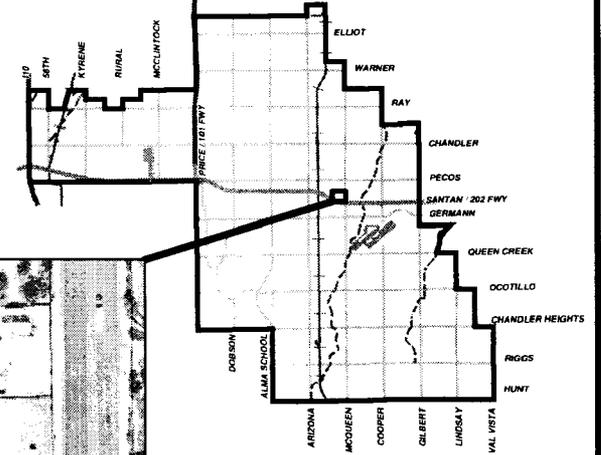
PROPOSED MOTION:

Move that Council pass and adopt Resolution No. 4237 accepting a no cost license agreement Right-of-Way License for landscape and maintenance for a 20-foot strip of United States of America's (USA) property located in an open space area adjacent to Arizona Reflection subdivision.

Attachment(s): Location/Site Map
Resolution No. 4237



ARIZONA REFLECTIONS SRP LICENSE



MEMO NO. CA09-049

 SRP LICENSE



RESOLUTION NO. 4237

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, TO AUTHORIZE AND APPROVE RESOLUTION 4237, ACCEPTING A NO COST LICENSE AGREEMENT RIGHT-OF-WAY LICENSE FOR LANDSCAPE AND MAINTENANCE FOR A 20-FOOT STRIP OF UNITED STATES OF AMERICA'S (USA) PROPERTY, LOCATED IN AN OPEN SPACE AREA ADJACENT TO ARIZONA REFLECTION SUBDIVISION.

WHEREAS, the City is completing construction of road widening improvements Germann Road Improvements (Dobson Road to Arizona Avenue);

WHEREAS, Salt River Project (SRP) requires no cost Right-of-Way License for landscape and maintenance for a 20-foot strip of United States of America's (USA) property, located in an open space area adjacent to Arizona Reflection subdivision.

WHEREAS, SRP has agreed to grant the City a Right-of-way License, at no cost, landscape and maintenance at this location;

NOW, THEREFORE, BE IT 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 accept the Right-of-way License for road right-of-way at this location across that certain property described in Exhibit "A" and "B", attached hereto and made a part hereof by reference.

Section 2. That the Right-of-way License shall be in the form attached hereto as Exhibit "C", subject to approval by the City Attorney.

Section 3. That the Mayor of the City of Chandler, Arizona, is hereby authorized to execute the Right-of-way License on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2008.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4237 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ____ day of _____, 2008, and that a quorum was present thereat.

CITY CLERK

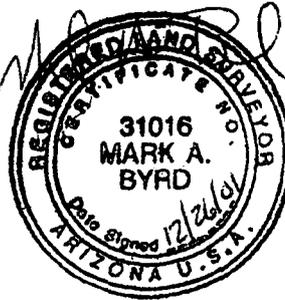
APPROVED AS TO FORM:

CITY ATTORNEY

GAB

Carter=Burgess

CONTRACT NO. 02LE323346
CASE NO. 01-031



3003 North Central Avenue
Suite 1700
Phoenix, Arizona 85012
Phone: (602) 263-5309
Fax: (602) 263-8373
www.c-b.com

LEGAL DESCRIPTION (PROPOSED USA FEE PROPERTY)

EXHIBIT "A"

That part of the North half of Section 3, Township 2 South, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the East Quarter-Corner of said Section 3;

Thence South 89° 25' 57" West, along the East-West Mid-Section line, a distance of 1400.38 feet;

Thence departing said Mid-Section line, North 00° 34' 03" West, a distance of 40.00 feet to a point on a line which is parallel with and 40.00 feet Northerly, as measured at right angles from said Mid-Section line and being the TRUE POINT OF BEGINNING;

Thence North 45° 00' 00" West, a distance of 39.21 feet to a point on a line which is parallel with and 68.00 feet Northerly, as measured at right angles from said Mid-Section line;

Thence South 89° 25' 57" West, along said parallel line, a distance of 240.63 feet;

Thence South 00° 34' 03" East, a distance of 28.00 feet to a point on a line which is parallel with and 40.00 feet Northerly, as measured at right angles from said Mid-Section line;

Thence North 89° 25' 57" East, along said parallel line, a distance of 20.00 feet;

Thence North 00° 34' 03" West, a distance of 8.00 feet to a line which is parallel with and 48.00 feet Northerly, as measured at right angles from said Mid-Section line;

Thence North 89° 25' 57" East, along said parallel line, a distance of 212.23 feet;

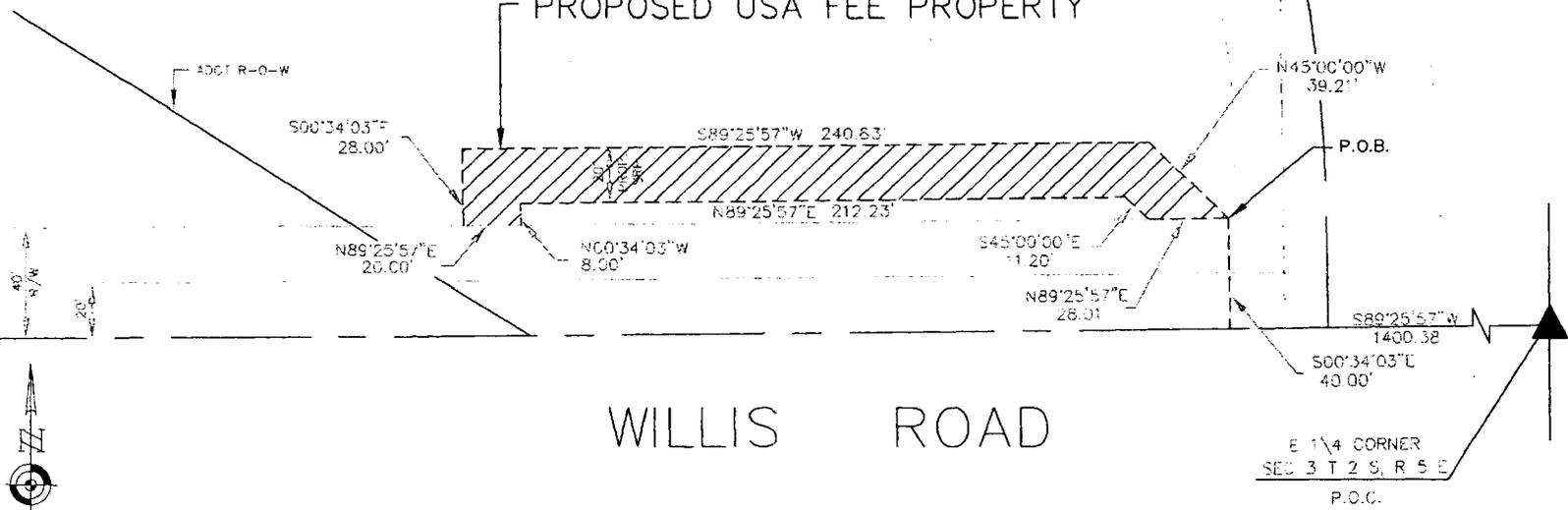
Thence South 45° 00' 00" East, a distance of 11.20 feet to a point on a line which is parallel with and 40.00 feet Northerly, as measured at right angles from said Mid-Section line;

Thence North 89° 25' 57" East, along said parallel line, a distance of 28.01 feet to the TRUE POINT OF BEGINNING.

The above described parcel contains 5392.81 square feet or 0.12 acres more or less.

PROPOSED USA FEE PROPERTY

HAMILTON ST



Carter-Burgess

3003 NORTH CENTRAL AVE., SUITE 1700 - PHOENIX, ARIZONA 85012
 (602) 263-5309 FAX (602) 263-8373

PROPOSED PROPERTY (GROSS AREA) []

(5392.81 SQ. FT. --- 0.12 ACRES)

ARIZONA REFLECTIONS

DETAIL TO ACCOMPANY LEGAL DESCRIPTION
 FOR PROPOSED USA FEE PROPERTY

20020440637



P. O. Box 52025
Phoenix, AZ 85072-2025
(602) 236-5900
www.srpnet.com

Linda Huber
Sr. Land Management Agent
Property Management PAB348
Phone (602) 236-8187
Fax: (602) 683-4637
E-mail: Linda.huber@srpnet.com

July 9, 2008

Ms. Lori Greco
Development Project Administrator
City of Chandler
Mail Stop 410
PO Box 4008
Chandler, AZ 8544-4008

RE: SRP Right of License, Arizona Reflections III
Willis Rd & Hamilton St

Dear Lori,

As previously discussed, I will have the Arizona Reflections III Homeowners Association sign a license for the landscaping and the HOA will be the primary licensee and the city will be the secondary licensee. SRP will address all issues with the HOA and only go to the City should the HOA cease to operate as an Association or should the HOA default on any provisions within the Right of Way License.

Should you have any questions, please give me a call.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Linda Huber', is written over the typed name.

Linda Huber

WHEN RECORDED MAIL TO:

SALT RIVER PROJECT

Land Department/PAB348
P. O. Box 52025
Phoenix, Arizona 85072-2025

RIGHT OF WAY LICENSE

Maricopa County
303-28-USA
Arizona Reflections III

R/W No. 534 Agt. LMH
W _____ C _____

KNOW ALL MEN BY THESE PRESENTS:

That 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, a municipal corporation**, Licensee, a Right of Way License ("License") conveying the nonexclusive right and privilege to enter upon and use the following described certain real property ("Licensed Property") for landscaping situated in the County of Maricopa, State of Arizona, to-wit:

See Exhibit A attached hereto and by reference made a part hereof.

This License is subject to the paramount rights of the United States of America ("USA") in and to the Licensed Property, federal reclamation law, and all agreements existing and to be made between and among the U.S.A., the Salt River Valley Water Users' Association ("Association") and Licensor regarding the management, care, operation and maintenance of the Reclamation Project.

The License herein granted shall be subject to the following additional conditions:

- 1) Licensor shall retain the prior right to construct, reconstruct, operate and maintain its existing and future irrigation, electrical and telecommunication facilities within the Licensed Property herein granted. Licensee will not be responsible for any landscaping replacement caused by the installation, maintenance or removal of electrical or telecommunication facilities.
- 2) This License is nonexclusive and nothing herein shall be construed to prevent or restrict Licensor from granting other privileges to use the Licensed Property in a manner not inconsistent with Licensee's use of the Licensed Property in accordance with this License.

Those granted these additional privileges will be responsible for replacing in kind the landscaping to the specifications of the Licensor.

- 3) Licensor shall not be liable for any expense, cost or charge arising from Licensee's exercise of rights granted herein. Licensee shall reimburse Licensor for all landscape costs and expenses incurred by Licensor to remove or relocate irrigation facilities and landscaping to accommodate the purposes for which this License is issued.
- 4) Prior to making any improvements or requesting any proposed alteration to existing structures within the Licensed Property, Licensee shall submit plans for Licensor's approval. Such approval shall not be unreasonably withheld.
- 5) To the extent not prohibited by law, Licensee, its successors and assigns, shall indemnify, release, and hold harmless Licensor, Association and the United States of America, and the directors, officers, employees, agents, successors and assigns thereof, against and from any claim, demand, lawsuit or action of any kind for damages or loss, whether such damage or loss is to person or property, arising out of: (a) acts or omissions of Licensee, its agents, officers, directors, or employees; (b) Licensee's use or occupancy of the Licensed Property for the purposes contemplated by this License, including but not limited to claims by third parties who are invited or permitted onto the Licensed Property, either expressly or impliedly, by Licensee or by the nature of Licensee's improvement or other use of the Licensed Property pursuant to this License; (c) Licensee's failure to comply with or fulfill its obligations established by this License or by law. Such obligation to indemnify shall extend to and encompass all costs incurred by Licensor in defending against such claims, demands, lawsuits or actions, including but not limited to attorney, witness and expert witness fees, and any other litigation related expenses. Licensee's obligation pursuant to this Section shall not extend to liability attributable to the sole exclusive negligence or willful action of Licensor, its directors, officers, employees, agents, successors or assigns for which Licensor shall indemnify Licensee. The provisions of this Section shall survive termination of this License.
- 6) The License herein granted is subject to all prior licenses, leases, and easements of record.
- 7) Either party may terminate this License without cause upon not less than 360 days written notice.

IN WITNESS WHEREOF, _____
Has caused its name to be executed by its duly authorized representative(s), this _____ day of _____, 2008.

APPROVED AS TO FORM

LICENSEE:
CITY OF CHANDLER, a municipal corporation

City Attorney *GAB*

By _____

Its _____

ATTEST:

City Clerk

STATE OF _____)

) ss

COUNTY OF _____)

The forgoing instrument was acknowledged before me this _____ day of _____, 2008 by _____, as _____, on behalf of such corporation.

My Commission Expires:

Notary Public

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).

PM - 112103
License Right of Way USA Fee Prop