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NOV 20 2008



**Chandler · Arizona**  
*Where Values Make The Difference*

**MEMORANDUM**                      **Real Estate – Council Memo No. RE 09-130**

**DATE:**                      NOVEMBER 20, 2008

**TO:**                              MAYOR AND COUNCIL

**THRU:**                      W. MARK PENTZ, CITY MANAGER *WP*  
R.J. ZEDER, PUBLIC WORKS DIRECTOR *RJZ*  
DAN COOK, PUBLIC WORKS DEPUTY DIRECTOR *DC*  
SHEINA HUGHES, ASSISTANT PUBLIC WORKS DIRECTOR/  
CITY ENGINEER *SH*  
MIKE NORMAND, TRANSPORTATION SERVICES & PLANNING  
MANAGER *MN*

**FROM:**                      ERICH KUNTZE, REAL ESTATE MANAGER *EK*

**SUBJECT:**                      ORDINANCE NO. 4110 AUTHORIZING THE ASSIGNMENT TO  
SALT RIVER PROJECT (SRP) OF A CERTAIN AERIAL EASEMENT  
ACQUIRED BY THE CITY OF CHANDLER FOR THE RIGGS ROAD  
(GILBERT ROAD TO VAL VISTA DRIVE) IMPROVEMENT  
PROJECT

RECOMMENDATION: Staff recommends introduction and tentative approval of Ordinance No. 4110 authorizing the assignment to Salt River Project (SRP) of a certain aerial easement acquired by the City of Chandler for the Riggs Road (Gilbert Road to Val Vista Drive) improvement project.

BACKGROUND/DISCUSSION: In connection with a City road project for the widening and improvement of Riggs Road from Gilbert Road to Val Vista Drive (the "Project"), the City acquired roadway and easements needed for the Project, which also included acquisition of an aerial easement ultimately intended for use by SRP. The easement that was conveyed to the City through a Final Order of Condemnation, has been processed through the court system and is now ready to be assigned. The easement is needed to accommodate SRP's facilities to be located as a consequence of the Project.

Upon recording the assignment, the City would have no further obligation, responsibility or liability, and no further rights, pursuant to or because of the easement.

Memo No. RE09-130

November 20, 2008

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FINANCIAL IMPLICATIONS:

Cost: N/A

Savings: N/A

Long Term Costs: N/A

PROPOSED MOTION: Move that Council introduce and tentatively approve Ordinance No.4110 authorizing the assignment to Salt River Project (SRP) of a certain aerial easement acquired by the City of Chandler for the Riggs Road (Gilbert Road to Val Vista Drive) improvement project.

Attachments: Ordinance 4110

Map

Assignment of Aerial Easement

Final Order of Condemnation 2008-0778618

ORDINANCE NO. 4110

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING THE ASSIGNMENT TO SALT RIVER PROJECT (SRP) OF A CERTAIN AERIAL EASEMENT ACQUIRED BY THE CITY OF CHANDLER FOR THE RIGGS ROAD (GILBERT ROAD TO VAL VISTA DRIVE) IMPROVEMENT PROJECT.

WHEREAS, the City of Chandler filed a condemnation action to acquire roadway and easements necessary to widen and improve Riggs Road from Gilbert Road to Val Vista Drive; and

WHEREAS, the easements acquired included a certain aerial easement needed to accommodate the relocation of existing electrical facilities of Salt River Project Agricultural Improvement and Power District ("Salt River Project"); and

WHEREAS, the aerial easement was acquired under terms that permit the recording of an assignment of said easements directly to Salt River Project, after which the City will have no further obligation, responsibility, liability or rights associated with the easement;

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

**Section 1.** The City may proceed to execute and record one or more agreements as needed to assign over to Salt River Project the aerial easement acquired by the City through a condemnation action filed in connection with the Riggs Road (Gilbert Road to Val Vista Drive) improvement project.

**Section 2.** The City Manager is authorized to execute such agreements, which shall be in form approved by the City Attorney.

INTRODUCED AND TENTATIVELY APPROVED by the City of Chandler, Arizona, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

PASSED AND ADOPTED by the Mayor and 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 Ordinance No.4110 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on \_\_\_\_\_ day of \_\_\_\_\_, 2008, and that a quorum was present thereat.

\_\_\_\_\_  
CITY CLERK

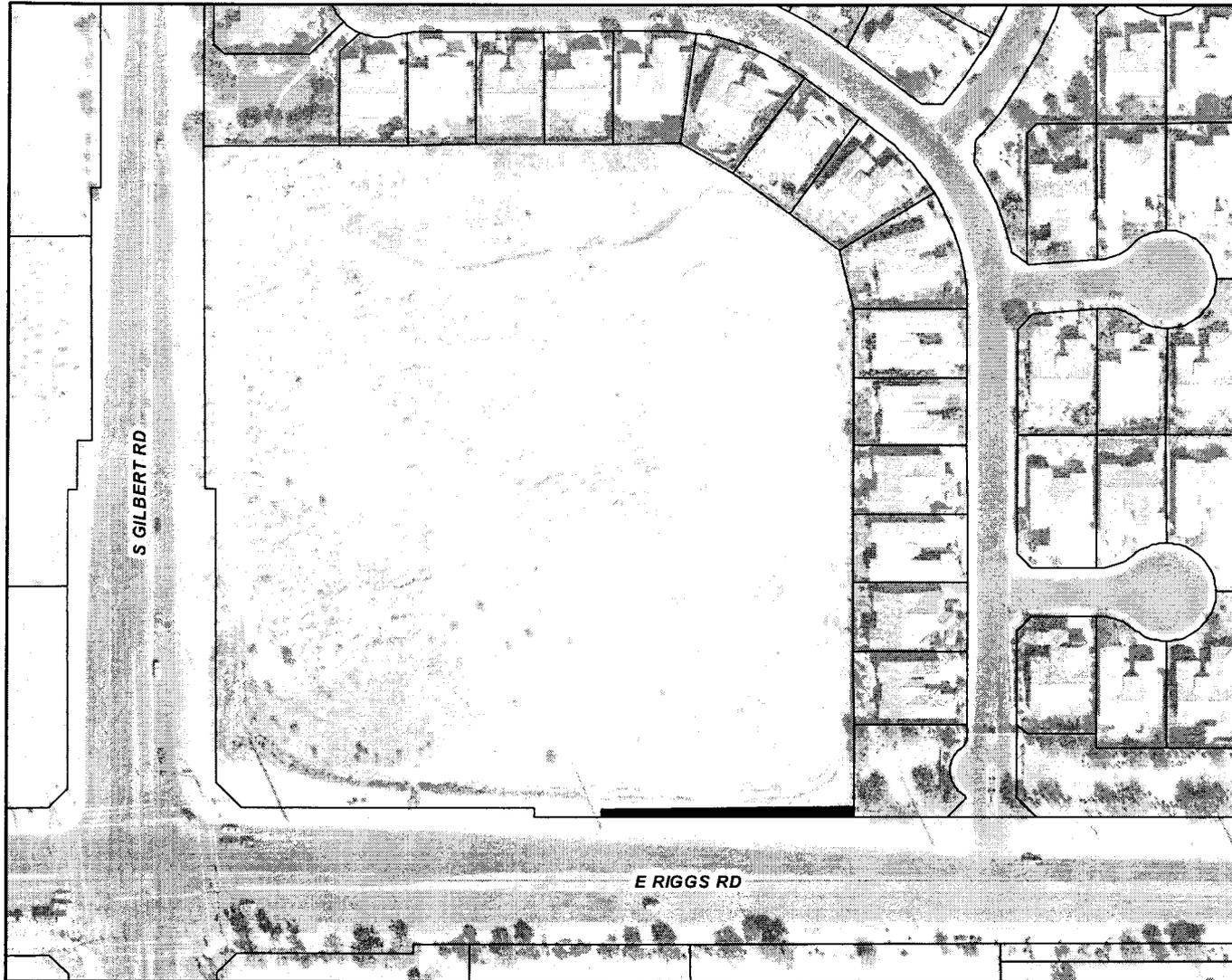
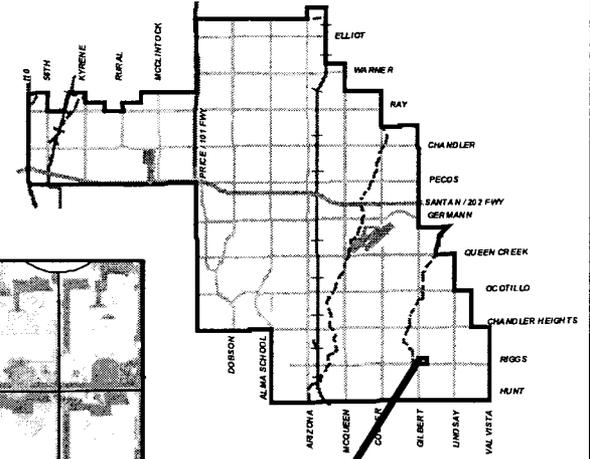
PUBLISHED:

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY *EAB*



# ASSIGNMENT OF AERIAL EASEMENT TO SALT RIVER PROJECT RIGGS RD - GILBERT RD TO VAL VISTA DR



**MEMO NO. RE09-130**

**ORDINANCE NO. 4110**

 **AERIAL EASEMENT**



When recorded, mail to:  
Salt River Project  
P.O Box 52025  
Mail Station PAB 350  
Phoenix, AZ 85072

**ASSIGNMENT OF AERIAL EASEMENT**  
(Riggs Road from Gilbert Road to Val Vista Drive)

THIS ASSIGNMENT OF AERIAL AND GROUND EASEMENTS (the "Assignment") is made this \_\_\_ day of \_\_\_\_\_, 2008, by and between CITY OF CHANDLER, an Arizona municipal corporation, as Assignor ("City"), and SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an agricultural improvement district organized and existing under the laws of the State of Arizona, as Assignee ("SRP"), in order to complete all transactions and perform all acts necessary for the completion of the road project described below.

1. **Recitals.** As background to this transaction, the parties recite and acknowledge as follows:

1.1. In connection with a City road project for the widening and improvement of Riggs Road from Gilbert Road to Val Vista Drive in Chandler, Arizona (the "Project"), City filed a condemnation action in the Maricopa County Superior Court to acquire roadway and easements needed for the Project that also included acquisition of an aerial easement ultimately intended for use by SRP. The easement was needed to assure clear space to accommodate SRP's 69 KV transmission lines and supporting structures that were required to be located as a consequence of the Project.

1.2. In the court action, a Judgment in Condemnation was entered; City satisfied its obligations under the Judgment; and a Final Order of Condemnation was entered by the Court and recorded with the Maricopa County Recorder to complete the acquisition of the property interests described in the Final Order, which included an aerial easement over described real property in accordance with the terms and conditions for the easement as stated in the Final Order. In this case, the terms and conditions for the easement provided that City could assign the easement to SRP, and, upon recording the assignment, City would have no further obligation, responsibility or liability, and no further rights, pursuant to or because of the easement.

1.3. City and SRP, through the execution and recording of this Assignment, desire to complete the assignment to SRP of the aerial easement acquired through the recording of the Final Orders of Condemnation entered in the condemnation action. The condemnation action is listed below by case name and number followed by the recording date and recording number for the Final Order of Condemnation:

<u>Case Name (City v. _____)</u>	<u>Case Number</u>	<u>F.O. Recording Date</u>	<u>F.O. Recording Number</u>
LDR-Riggs & Gilbert L.L.C.	CV2008-005320	09/08/08	2008-0778618

2. **Agreement.** For Ten and No/100 Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and SRP agree as follows:

2.1. **Assignment and Acceptance.** City hereby assigns and transfers to SRP all of City's right, title and interest in and to the aerial easement acquired pursuant to the Final Order of Condemnation entered in the above-listed court action and subsequently recorded. SRP hereby accepts such assignment and agrees to be bound by the terms and conditions of the aerial easement as stated in the aforementioned Final Order of Condemnation for the above-listed court action.

2.2. **No Warranties.** City makes no warranties regarding the Assignment, the aerial easement, or the property affected by the easement, except that City does warrant that the person executing this Assignment on behalf of City is authorized to do so. SRP acknowledges and agrees that City makes no warranties regarding the Assignment, the aerial easement, or the property affected by the easement, except as stated above. SRP does warrant that the person executing this Assignment on behalf of SRP is authorized to do so.

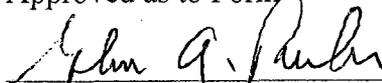
3. **Binding Effect.** This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date set forth above.

ASSIGNOR: CITY OF CHANDLER, an  
Arizona municipal corporation

By: \_\_\_\_\_  
Mark Pentz, City Manager

Approved as to Form

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

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing Assignment of Overhead Transmission (Aerial) Easement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by Mark Pentz, as City Manager for the City of Chandler, an Arizona municipal corporation, for the municipal corporation, being authorized so to do.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

ASSIGNEE: SALT RIVER PROJECT  
AGRICULTURAL IMPROVEMENT AND  
POWER DISTRICT, an agricultural  
improvement district organized and existing  
under the laws of the State of Arizona

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing Assignment of Overhead Transmission (Aerial) Easement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, as \_\_\_\_\_ for Salt River Project Agricultural Improvement and Power District, an agricultural improvement district organized and existing under the laws of the State of Arizona, for the district, being authorized so to do.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

When recorded mail to:

RETURN TO  
MAIL ROOM



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
2008-0778618 09/08/08 04:42 PM  
1 OF 3

BROWN

Name:

Address:

City/State/Zip:

this area reserved for county recorder

CAPTION HEADING:

DO NOT REMOVE

This is part of the official document.

1 James R. Cairns (#010177)  
Glenn A. Brockman (#004821)  
2 CHANDLER CITY ATTORNEY'S OFFICE  
P.O. Box 4008, MS 602  
3 Chandler, Arizona 85244-4008  
(480) 782-4640  
4 Attorneys for Plaintiff

AUG 26 2008

FILED 8:59 am

MICHAEL R. JEANES, Clerk  
By P. Valenzuela  
P. Valenzuela, Deputy

5 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
6 **IN AND FOR THE COUNTY OF MARICOPA**

7 CITY OF CHANDLER, an Arizona municipal  
8 corporation,

Cause No.: CV2008-005320

9 Plaintiff,

10 vs.

**FINAL ORDER IN CONDEMNATION**

11 LDR-RIGGS & GILBERT, L.L.C.;  
12 MESQUITE GROVE ESTATES  
HOMEOWNERS ASSOCIATION;  
13 PRESLEY HOMES/ ARIZONA REGION;  
BANK ONE, N.A.; MARICOPA COUNTY;  
14 JOHN DOES I-X; JANE DOES I-X; ABC  
COMPANIES I-X; UNKNOWN OWNERS;  
15 UNKNOWN HEIRS, SUCCESSORS AND  
DEVISEES OF ANY OF THE ABOVE-  
NAMED DEFENDANTS, IF DECEASED,

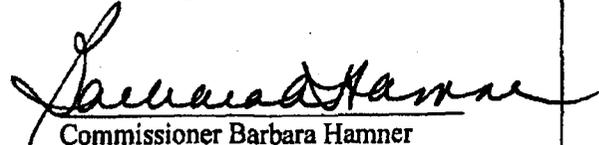
16 Defendants.

17 In this cause Default Judgment in Condemnation was entered on July 31, 2008, and  
18 Plaintiff having deposited the additional interest amount due, pursuant to said Default Judgment  
19 in Condemnation, with the Clerk of the Court on August 5, 2008, as set forth in the Notice of  
20 Deposit Pursuant to A.R.S. § 12-1124 filed with the Court on August 7, 2008, evidencing to the  
21 Court that Plaintiff's obligation under the Default Judgment in Condemnation has been fully  
22 satisfied;

23 IT IS THEREFORE ORDERED, that Plaintiff, CITY OF CHANDLER, have, and it is  
24 hereby granted, a final order and decree in condemnation in connection with the Default  
25

1 Judgment in Condemnation entered on July 31, 2008, condemning for roadway purposes a  
 2 temporary drainage easement in, on, over, under, across and through that portion of the subject  
 3 property described in attached Exhibit "A", and an aerial easement on, over and across that real  
 4 property described in attached Exhibit "B", with use limited by the terms and conditions stated in  
 5 Exhibit "C" Upon recording a copy of this Final Order of Condemnation with the County  
 6 Recorder of Maricopa County, Plaintiff, CITY OF CHANDLER, shall have, and it is hereby  
 7 granted, a final order and decree in condemnation condemning for roadway purposes a  
 8 temporary drainage easement in, on, over, under, across and through that portion of the subject  
 9 property described in attached Exhibit "A", and an aerial easement on, over and across that real  
 10 property described in attached Exhibit "B", with use limited by the terms and conditions stated in  
 11 Exhibit "C"

12 DONE IN OPEN COURT this 15 day of Aug, 2008.

13  
 14   
 15 Commissioner Barbara Hamner  
 Maricopa County Superior Court

16  
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Exhibit "A"

TEMPORARY DRAINAGE EASEMENT

RIGGS ROAD  
JN 06-0389

LEGAL DESCRIPTION

APN 304-82-247 NEW DRAINAGE EASEMENT

A PORTION OF TRACT K, MESQUITE GROVE ESTATES, ACCORDING TO BOOK 553 OF MAPS, PAGE 47, RECORDS OF MARICOPA COUNTY, ARIZONA, AND BEING LOCATED IN THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 30;  
THENCE N89°56'19"E, ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 374.84 FEET;  
THENCE N00°03'41"W, A DISTANCE OF 75.00 FEET TO THE POINT OF BEGINNING;  
THENCE S89°56'19"W, BEING PARALLEL WITH AND 75.00 FEET NORTH OF SAID SOUTH LINE, A DISTANCE OF 71.00 FEET;  
THENCE N00°00'00"W, A DISTANCE OF 71.04 FEET;  
THENCE N90°00'00"E, A DISTANCE OF 71.00 FEET;  
THENCE S00°00'00"W, A DISTANCE OF 70.96 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 5,041 SQUARE FEET OR 0.116 ACRES, MORE OR LESS.

OLSSON ASSOCIATES  
7250 NORTH 16TH STREET, SUITE 210  
PHOENIX, ARIZONA 85020  
(602) 748-1000



Exhibit "B"

RIGGS ROAD  
JN 06-0389  
"SRP JOB NUMBER XA3-3697"

LEGAL DESCRIPTION

APN 304-82-247 NEW ELECTRIC AERIAL EASEMENT

A PORTION OF TRACT K, MESQUITE GROVE ESTATES, ACCORDING TO BOOK 553 OF MAPS, PAGE 47, RECORDS OF MARICOPA COUNTY, ARIZONA, AND BEING LOCATED IN THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 2 SOUTH, RANGE 8 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 30;  
THENCE N89°58'19"E, ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER, A  
DISTANCE OF 466.88 FEET;  
THENCE N00°03'41"W, A DISTANCE OF 50.72 FEET;  
THENCE N00°28'34"W, A DISTANCE OF 14.28 FEET TO THE POINT OF BEGINNING;  
THENCE CONTINUING N00°28'34"W ALONG SAID LINE, A DISTANCE OF 7.72 FEET;  
THENCE N89°31'26"E, A DISTANCE OF 255.12 FEET TO A POINT ON THE EAST LINE OF  
SAID TRACT K;  
THENCE S00°03'41"E, A DISTANCE OF 9.57 FEET TO THE SOUTHEAST CORNER OF SAID  
TRACT K;  
THENCE S89°56'19"W, BEING PARALLEL WITH AND 65.00 FEET NORTH OF SAID SOUTH  
LINE, A DISTANCE OF 255.05 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 2,206 SQUARE FEET OR 0.051 ACRES, MORE OR LESS.

OLSSON ASSOCIATES  
7250 NORTH 16TH STREET, SUITE 210  
PHOENIX, ARIZONA 85020  
(602) 748-1000

## EXHIBIT "C"

Aerial Easement - Terms and Conditions

Plaintiff City of Chandler, its agents, employees, contractors, and permittees and its and their respective successors and assigns ("Grantee"), shall have an easement over, across, through and along that certain real property described in Exhibit "B" attached to this Default Judgment in Condemnation (the "Easement Property"), to construct, install, reconstruct, replace, remove, repair, operate and maintain for itself and others a line of conductors, cables, supports, and other appliances and fixtures (collectively the "Facilities"), for the transmission and distribution of electricity, and for all other purposes connected therewith, at such locations and elevations over, across, and along the Easement Property as Grantee may now or hereafter deem convenient or necessary from time to time, together with the right of ingress and egress to, from, across and along the Easement Property.

This easement is subject to the following conditions and limitations:

1. This easement is subject to all easements and encumbrances of record, other than those extinguished through this condemnation action, and is non-exclusive, *provided that* later granted easements shall be subject to Grantee's rights and uses.
2. All of the Facilities placed within the Easement Property pursuant to this instrument shall remain the property of Grantee.
3. There is reserved to the record owner of the Easement Property, and the owner's successors and assigns ("Grantor"), the right to full use of the surface of the Easement Property, other than where Grantee has placed the Facilities, for any purpose consistent with the rights and privileges herein granted to Grantee, including, without limitation, for the purpose of landscaping, parks, storm water retention basins, cross fences, trail and bike paths, walkways, alleys, driveways, road crossings, vehicle parking or storing, irrigation ditches, pipelines, and public utilities; *provided, however*, that such use shall not unreasonably interfere with Grantee's right and ability to access, maintain and use the Facilities or endanger any of the Facilities or the use thereof; and *provided further* that Grantor shall not construct or permit to be constructed any building or major structure, plant any trees, drill any well, store materials of any kind, or alter ground level by cut or fill, within the area of the Easement Property.
4. Grantor shall properly maintain the surface of the Easement Property. Grantee shall have the right (but not the obligation) to trim, cut and clear away trees or brush whenever in its judgment the same shall be necessary for the convenient and safe exercise of the rights herein granted.
5. Grantee shall at all times safely operate and maintain the Facilities within the Easement Property and shall promptly repair and restore to its prior condition any

paving, parking lot striping or other site improvements existing within the Easement Property that are disturbed by the construction and maintenance of the Facilities by Grantee, or Grantee's agents or contractors.

6. In the exercise of this easement, Grantee shall not unreasonably interfere with or obstruct Grantor, or Grantor's agents or contractors, in the location or construction of any buildings located in the area adjoining the Easement Property, or unreasonably interfere with any business of Grantor. Nothing in this paragraph, however, shall allow Grantor, or Grantor's agents or contractors, to construct a building or other major structure within the Easement Property, or to unreasonably interfere with Grantee's rights to construct, operate and maintain the Facilities.

7. Notwithstanding any other provision to the contrary, this easement is subject to any structure or building, or any portion thereof, which is located within the Easement Property and existing as of February 1, 2005, the date this action was filed. However, any modification, alteration or remodeling of any such structure or building, whether temporary or permanent, undertaken without the prior written consent of Grantee, that will cause the height of the structure or building to exceed 19 feet from grade shall be deemed an unreasonable interference with Grantee's right and ability to access, maintain and use its Facilities.

8. This easement conveys an access and aerial easement only, and no poles or other structures shall be placed on the surface of the easement area described herein.

9. **CAUTION:** Facilities placed within the Easement Property may contain high voltage electrical equipment. Notice is hereby given that the location of any underground electrical conductors or facilities must be verified as required by Arizona Revised Statutes, Section 40-360.21 et. seq., Arizona Blue Stake Law, prior to any excavation. Notice is also hereby given that any activity performed within the Easement Property shall comply with the Arizona Overhead Powerline Safety Law, Arizona Revised Statutes 40-360.41-45.

10. In the event Grantee records a document to formally abandon this easement, all of Grantee's rights hereunder shall cease, except the right to remove any and all property placed upon the Easement Property within a reasonable time subsequent to such abandonment.

11. The terms and conditions herein set forth shall 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, lessees and permittees of Grantor and Grantee.

12. Plaintiff City of Chandler may, in its sole discretion, assign the easement rights granted herein to Salt River Project Agricultural Improvement and Power District, an agricultural improvement district organized and existing under the laws of the State of Arizona ("SRP"), for use by SRP, its agents, employees, contractors and permittees and

its and their respective successors and assigns, and, upon recording such assignment, City of Chandler shall have no further obligation, responsibility or liability, and no further rights, pursuant to or because of this easement.

# SCAN

The foregoing instrument is a full, true and correct copy of the original on file in this office.

Attest 9/15 20 08

MICHAEL K. JEANES, Clerk of the Superior Court of the State of Arizona, in and for the County of Maricopa.

By E. Cochran Deputy