

Staff Summary Report



Council Meeting Date: 07/22/2008

Agenda Item Number: _____

SUBJECT: Request approval of a resolution authorizing the granting of a License Agreement to Kiewit Western Company for construction staging at 1850 W. Rio Salado.

DOCUMENT NAME: 20080722PWCH19 LICENSE AGREEMENT (0505)
RESOLUTION NO. 2008.53

SUPPORTING DOCS: Yes

COMMENTS: This License Agreement will be administered by and appropriate fees be charged by the Department of Public Works to Kiewit Western Company for the use of a 8 acre +/- site at 1850 W. Rio Salado Parkway. This site will be used for a temporary equipment and materials storage site for a defined period from August 1, 2008 to April 30, 2009, subject to the ability of the Public Works Manager to extend.

PREPARED BY: Larry Shobe, Engineering Services Administrator (x8417)

REVIEWED BY: Andy Goh, Deputy PW Manager/City Engineer (x8896)

APPROVED BY: Glenn Kephart, Public Works Manager (x8205)

LEGAL REVIEW AS TO FORM: Cynthia McCoy, Assistant City Attorney (x2187)

FISCAL NOTE: N/A

RECOMMENDATION: Adopt Resolution No. 2008.53 and authorize the Mayor to execute any necessary documents.

RESOLUTION NO. 2008.53

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE GRANTING OF A LICENSE FOR THE SHORT TERM USE OF CITY PROPERTY FOR EQUIPMENT AND MATERIALS STORAGE IN THE WEST RIO SALADO SUBDIVISION.

WHEREAS, it has been determined to be in the best interest of the City of Tempe to regulate the private use of City owned properties within its borders; and

WHEREAS, the City of Tempe wishes to grant a License Agreement as described in Exhibit "A" attached hereto, to Kiewit Western Company for the short term use of City owned property in the West Rio Salado Subdivision.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, MARICOPA COUNTY, ARIZONA, AS FOLLOWS

Section 1. That the City of Tempe does hereby authorize the granting of a license to Kiewit Western Company to use the property described on, and in the form attached hereto as, Exhibit "A".

Section 2. The Manager or his designee is authorized to execute any documents that may be necessary to carry out the provisions of this Resolution, including without limitation the License.

Resolution No. 2008.53
Page Two

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE,
ARIZONA this _____ day of July, 2008.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT "A"

LICENSE AGREEMENT

This License Agreement ("**Agreement**") is executed as of _____, 2008 ("**Agreement Date**"), by and between the City of Tempe, an Arizona municipal corporation ("**City**"), and Kiewit Western Company ("**Licensee**").

BACKGROUND

A. As of the Agreement Date, City is the owner of the real property ("**City Property**") that is legally described on the attached Exhibit "A".

B. As of the Agreement Date, Kiewit Western Company (Kiewit) is under contract to the City of Phoenix to construct the "Val Vista Watermain Rehabilitation Project".

C. In connection with its contract to construct the Val Vista Watermain Project for the City of Phoenix, Kiewit has requested that the City grant to Kiewit and its employees, agents and sub-contractors (the "**Kiewit Parties**") the use of an 8 acre +/- site described in Exhibit "A" for a temporary equipment and materials storage site.

D. The City is agreeable to granting a license for the use of the described City Property for a temporary equipment and materials storage site upon the terms and conditions that are set forth in this Agreement.

AGREEMENTS

For valuable consideration, the receipt and sufficiency of which are acknowledged, Kiewit and the City (the "**Parties**") agree as follows.

1. License Matters

(a) Grant of License. The City grants to Kiewit a temporary, non-exclusive license ("**License**") over the City Property for the purpose of storing equipment and materials to be used by Kiewit in connection with the Val Vista Watermain Rehabilitation Project.

(b) Term; License Fee. The License shall commence on the Agreement Date and shall automatically terminate on April 30, 2009. If Kiewit submits a written request at least thirty (30) days prior to the end of the current term, the Director of Public Works or his designee may extend the term of the License on a month to month basis; provided that if no such extension is granted the term of this License shall expire on the scheduled expiration date.

Kiewit shall pay to City a license fee of Eight Thousand Dollars (\$8,000.00) per month, payable monthly on the first day of each month during the term of this Agreement; provided that partial months shall be apportioned based on the actual number of days. Kiewit may elect to pay the license fee in full on execution of this License (\$64,000.00), in which event, the entire fee shall be deemed earned and shall not

be prorated in the event this License is terminated prior to April 30, 2009. During any extension, the license fee shall be such amount as the Director of Public Works or his designee and Kiewit may mutually agree, but not less than \$8,000.00 per month.

Any payment due under this License that is not paid within 5 days of its due date shall bear interest from the date payment is due at the rate of eighteen percent (18%) per annum. City shall have all the rights and remedies provided herein and by law for Kiewit's failure to pay any sums due hereunder.

(c) Indemnity. To the fullest extent permitted by law, Kiewit shall defend, indemnify and hold harmless the City, its agents, officers, officials, employees and volunteers (collectively, the "**Indemnified Parties**") for, from and against all claims, damages, losses and expenses, including but not limited to, reasonable attorney's fees, court costs, and the costs of appellate proceedings (collectively, the "**Indemnified Losses**"), arising from or related to the acts of omissions of the Kiewit Parties on or about the City Property. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. This indemnity shall survive the termination of this Agreement.

(d) No Liens. Kiewit shall not permit any liens to attach to the City Property as a result of the acts or omission of any of the Kiewit Parties, and if any such liens do attach, Kiewit shall immediately cause them to be released or bonded over to the reasonable satisfaction of the City.

(e) Insurance. During the term of the License, Kiewit shall maintain in full force and effect policies of general liability and automobile liability insurance in amounts reasonably acceptable to the City. All such policies shall name the City as additional insured and shall state that they may not be cancelled prior to expiration without 30 days prior written notice to the City. Kiewit shall coordinate the level of coverage with the City's Risk Manager.

(f) Restoration. Upon the termination of this License, Kiewit shall promptly remove all of its equipment, supplies, and material from the City Property and shall restore the City Property to the condition in which it existed as of the Agreement Date, normal wear and tear excepted.

2. Remedies. In the event of a breach of any of the terms or conditions of this Agreement, those affected shall be entitled to full and adequate relief by all available legal and equitable remedies, including, without limitation, specific performance.

3. Governing Law. This Agreement shall be interpreted according to, and governed by, the procedural and substantive laws of the State of Arizona. The Parties irrevocably consent to jurisdiction and venue in the State of Arizona and agree that they will not attempt to remove or transfer any action properly commenced in the State of Arizona. The successful party in any court action brought to enforce or interpret any provision of this Agreement will be entitled to recover its reasonable attorney's fees and court costs from the unsuccessful party.

4. Notices. All notices or other communications required or permitted to be provided pursuant to this Agreement shall be in writing and shall be hand delivered, sent by United States Postal Service, postage prepaid, by a nationally recognized courier service. All notices shall be deemed to have been given when delivered if hand delivered, when received if sent by courier, or forty-eight (48) hours following deposit in the United States Postal Service. Notices shall be addressed as follows:

If to Kiewit: **Kiewit Western Co.**
3888 East Broadway Road
Phoenix, AZ 85040
(602) 437-7878
Attn: **Jake Sinclair**
Project Manager
(602) 374-0337

with copy to: [insert name of attorney if desired]

If to City: City Manager
City of Tempe
31 East Fifth Street
Tempe, AZ 85251
Fax: 480-350-8930

with copy to: City Attorney
City of Tempe
21 East Sixth Street
Tempe AZ 85251
Fax: 480-350-8645

5. Entire Agreement. This Agreement, together with its Exhibits, is the entire agreement of the Parties and supersedes any and all prior oral or written agreements or understandings between the Parties pertaining to the subject matter of this Agreement. The Parties have made no representations, warranties, or inducements, express or implied, other than as set forth in this Agreement.

6. Invalidity. Every term of this Agreement shall be enforceable to the fullest extent permitted by law. If any term of this Agreement is determined to be to any extent unenforceable, that provision will be deemed modified in the most minimal manner so as to make it enforceable, and the remainder of this Agreement shall not be affected.

7. Time of the Essence. Time is of the essence of all provisions of this Agreement in which time is a relevant factor.

8. General Provisions. Each person executing this Agreement personally represents that he or she has the full legal right to do so in the capacity indicated. No waiver of any term of this Agreement shall be deemed to be a continuing waiver of that term or a waiver of any other term of this Agreement. This Agreement may be signed in one or more counterparts, whether by original, copy, or telecopy signature, each of which together will form one binding agreement of the Parties.

Executed as of the Agreement Date.

Kiewit Western Company

By: _____
Its: _____

“CITY”

The City of Tempe, an Arizona municipal corporation

By: _____
Its: _____

Approved as to form:

City Attorney

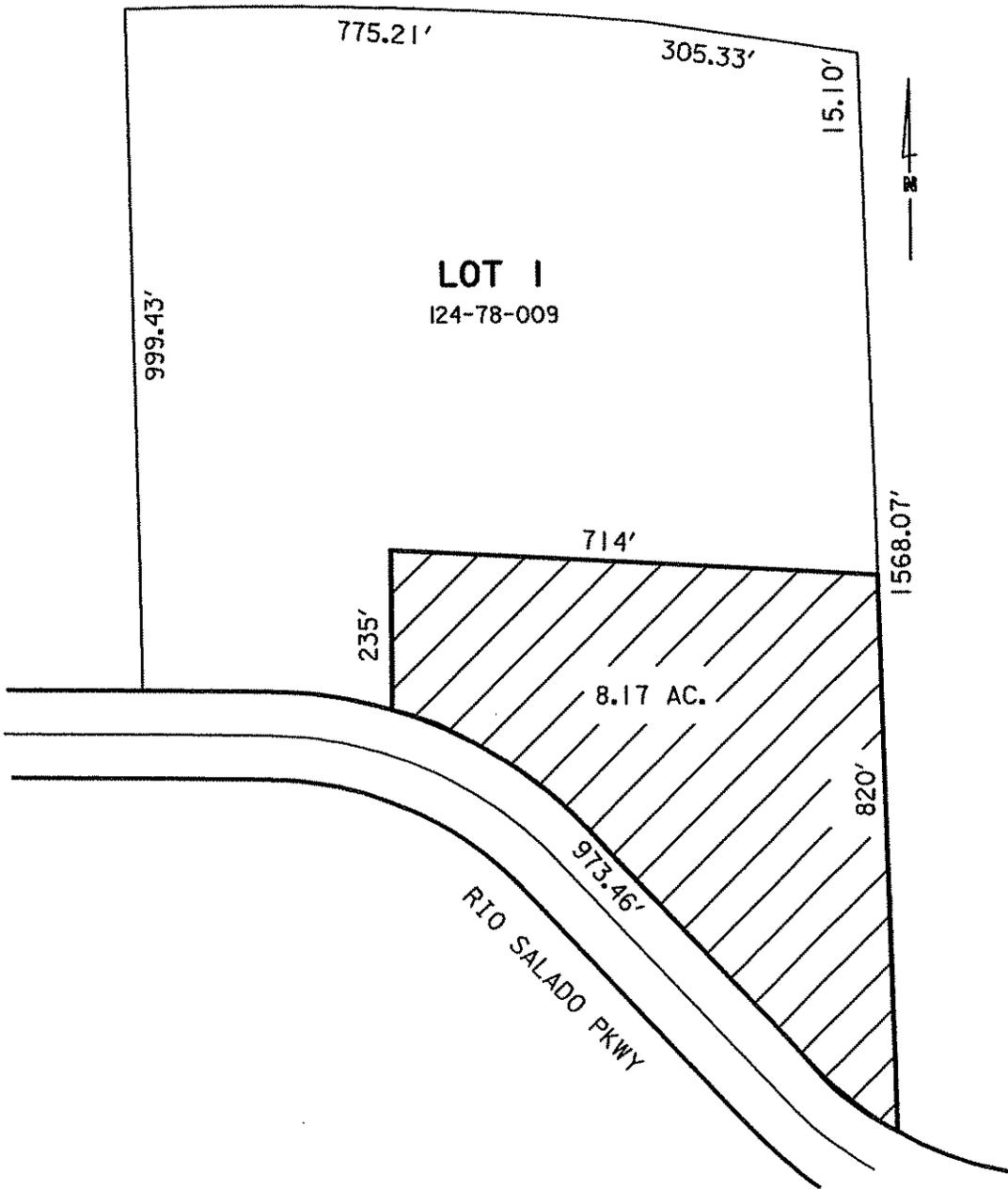
LIST OF EXHIBITS

Exhibit “A” Legal Description of City Property

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Kiewit Western License Agreement

1850 W. Rio Salado Pkwy



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Approved as to form:

City Attorney

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