



Staff Summary Report

Council Meeting Date: 04/23/2009

Agenda Item Number: _____

SUBJECT: This is a Resolution authorizing the Mayor to execute a Right of Way License Agreement with Salt River Project Agricultural Improvement and Power District for the use of the street easement over the Western Canal at Baseline Road.

DOCUMENT NAME: 20090423PWWS04 SALT RIVER PROJECT (0113-03)
RESOLUTION NO. 2009.27

SUPPORTING DOCS: Yes

COMMENTS: The City of Tempe desires the Right of Way License Agreement with Salt River Project for the use of the street easement over the Western Canal at Baseline Road.

PREPARED BY: Wendy Springborn-Pitman, Engineering Services Administrator (x8250)

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

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

LEGAL REVIEW BY: Teresa Voss, Assistant City Attorney (x8814)

FISCAL NOTE: N/A

RECOMMENDATION: Approval of Resolution No. 2009.27 authorizing the Mayor to execute the necessary documents.

ADDITIONAL INFO: The use of the street easement is for the use and maintenance of the roadway, landscaping, water and sewer lines in the surrounding area.

RESOLUTION NO. 2009.27

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A RIGHT OF WAY LICENSE AGREEMENT WITH SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT.

WHEREAS, the Salt River Project Agricultural Improvement and Power District owns the real property located at the Western Canal and Baseline Road crossing.

WHEREAS, the City of Tempe requires access for the use and maintenance of the roadway, landscaping, water, and sewer lines in said area.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

That the Mayor is authorized to execute a Right of Way License Agreement providing for a nonexclusive right to use the street easement over the Western Canal at Baseline Road.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of May, 2009.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

WHEN RECORDED MAIL TO:

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

RIGHT OF WAY LICENSE

Maricopa County
Parcel 123-54-USA

R/W No. 326 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 TEMPE, 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 roadway, landscaping, water, and sewer lines, 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.
- 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.

- 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 costs and expenses incurred by Licensor to remove or relocate irrigation or electrical 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 _____, 2009.

APPROVED AS TO FORM

LICENSEE:
CITY OF TEMPE, a municipal corporation

City Attorney

By _____

Its _____

ATTEST:

City Clerk

STATE OF _____)

) ss

COUNTY OF _____)

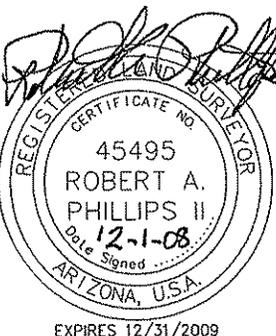
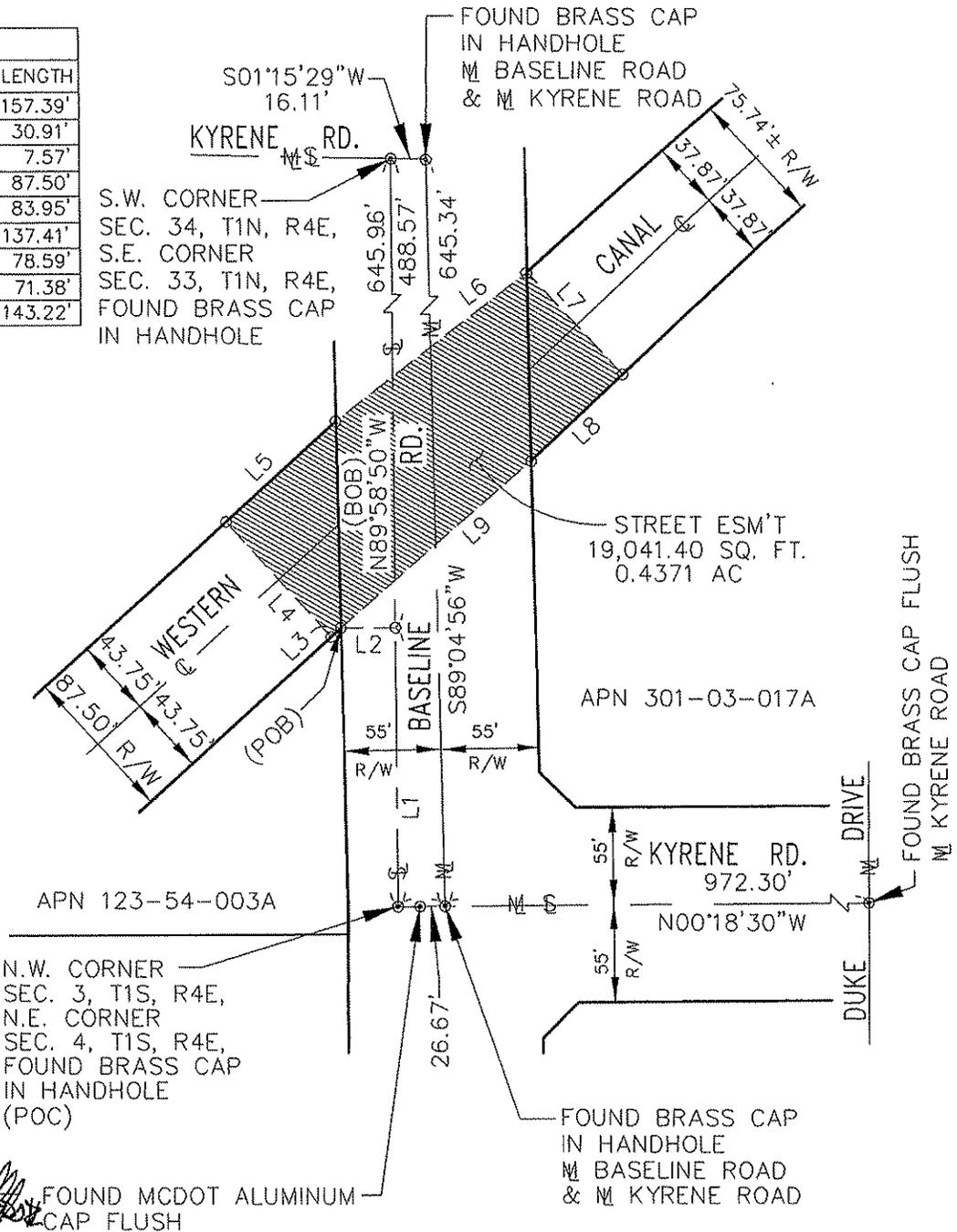
The forgoing instrument was acknowledged before me this _____ day of _____, 2009 by _____, as _____, _____, on behalf of such corporation.

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).

LINE TABLE		
NO.	BEARING	LENGTH
L1	S89°58'50"E	157.39'
L2	N00°01'10"E	30.91'
L3	N42°02'11"W	7.57'
L4	N47°57'49"E	87.50'
L5	S42°02'11"E	83.95'
L6	S37°25'05"E	137.41'
L7	S47°05'07"W	78.59'
L8	N42°54'53"W	71.38'
L9	N40°44'25"W	143.22'



N.T.S.

DESIGNED	CHECKED	DATE
PHK	PHILLIPS	12/01/08
DRAWN	SHEET	JOB NO.
PHK	1 OF 1	20595

LEGEND
 APN ASSESSOR PARCEL NUMBER
 BOB BASIS OF BEARINGS
 POB POINT OF BEGINNING
 POC POINT OF COMMENCEMENT
 [Hatched Box] EASEMENT AREA

REVISION	BY	APP.	DATE
STREET EASEMENT			
PART OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 4 EAST & PART OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 1 SOUTH, RANGE 4 EAST MARICOPA COUNTY, ARIZONA			

**STREET EASEMENT
OVER THE WESTERN CANAL**

THAT PART OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 4 EAST, AND THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 1 SOUTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND BRASS CAP IN HANDHOLE AT THE SOUTHEAST CORNER SECTION 33, TOWNSHIP 1 NORTH, RANGE 4 EAST, THENCE NORTH 89 DEGREES 58 MINUTES 50 SECONDS WEST A DISTANCE OF 645.96 FEET TO A FOUND BRASS CAP IN HANDHOLE AT THE NORTHWEST CORNER OF SAID SECTION 3 BEING THE BASIS OF BEARINGS AND THE **POINT OF COMMENCEMENT**;

THENCE ALONG SAID SECTION SOUTH 89 DEGREES 58 MINUTES 50 SECONDS EAST A DISTANCE OF 157.39 FEET;

THENCE NORTH 00 DEGREES 01 MINUTES 10 SECONDS EAST A DISTANCE OF 30.91 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF BASELINE ROAD ALSO BEING THE WESTERLY RIGHT-OF-WAY OF WESTERN CANAL AND THE **POINT OF BEGINNING**;

THENCE ALONG SAID WESTERLY RIGHT-OF-WAY OF WESTERN CANAL NORTH 42 DEGREES 02 MINUTES 11 SECONDS WEST A DISTANCE OF 7.57 FEET TO A POINT;

THENCE NORTH 47 DEGREES 57 MINUTES 49 SECONDS EAST A DISTANCE OF 87.50 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF WESTERN CANAL;

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE SOUTH 42 DEGREES 02 MINUTES 11 SECONDS EAST A DISTANCE OF 83.95 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY OF BASELINE ROAD;

THENCE SOUTH 37 DEGREES 25 MINUTES 05 SECONDS EAST, A DISTANCE OF 137.41 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF BASELINE ROAD AND THE EASTERLY RIGHT-OF-WAY OF WESTERN CANAL;

THENCE SOUTH 47 DEGREES 05 MINUTES 07 SECONDS WEST TO A POINT ON THE WESTERLY RIGHT-OF-WAY OF WESTERN CANAL, A DISTANCE OF 78.59 FEET;

THENCE ALONG SAID WESTERLY RIGHT-OF-WAY OF WESTERN CANAL NORTH 42 DEGREES 54 MINUTES 53 SECONDS WEST A DISTANCE OF 71.38 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY OF BASELINE ROAD;

THENCE NORTH 40 DEGREES 44 MINUTES 25 SECONDS WEST, A DISTANCE OF 143.22 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 19,041.3981 SQ. FT. OR 0.4371 ACRES MORE OR LESS.

