



BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date July 2, 2013 Agenda

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

1. Public Sewer and Highway Easement Agreement between Pima County and the City of Tucson.

The City of Tucson has submitted to Pima County a proposal for the construction of permanent streetcar facilities associated with the Tucson Modern Streetcar Project, over and adjacent to an existing Pima County sewer line which is located within a 20-foot sewer easement, recorded October 24, 1985, in Docket 7646 at Page 793, Pima County records. This Public Sewer and Highway Easement Agreement sets forth the rights and obligations of both the City and Pima County, should the streetcar improvements be impacted by the maintenance, repair and replacement of Pima County's sewer facilities. The area in question is located at the intersection of Cushing Street and Granada Avenue in Section 13, Township 14 South, Range 13 East.

This Agreement has been reviewed and approved by appropriate County Staff.

Cost to Pima County: \$0.00

STAFF RECOMMENDATION(S): It is recommended that the Board of Supervisors approve and authorize the Chairman to execute the Public Sewer and Highway Easement Agreement.

PIMA COUNTY COST: \$0.00 and/or REVENUE TO PIMA COUNTY: \$0.00

FUNDING SOURCE(S): N/A
(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

☐ YES ☒ NO

Board of Supervisors District:

1 ☐ 2 ☒ 3 ☐ 4 ☐ 5 ☐ All ☐

IMPACT:

IF APPROVED: The City of Tucson and Pima County will have a mutually accepted and approved Agreement which sets forth the rights and responsibilities of both parties should it become necessary for removal of Streetcar facilities for repair, maintenance or replacement of Pima County's sewer facilities.

IF DENIED: The City of Tucson and Pima County will not have a mutually accepted and approved Agreement which sets forth the rights and responsibilities of both parties should it become necessary for removal of Streetcar facilities for repair, maintenance or replacement of Pima County's sewer facilities. The absence of an approved agreement between the City and County regarding the use of the easement area may require resolution through litigation.

DEPARTMENT NAME: *Public Works Redl Property Services*

CONTACT PERSON: *Marty Stickford* TELEPHONE NO.: *724-6379*



**PIMA COUNTY
REGIONAL WASTEWATER RECLAMATION DEPARTMENT
201 NORTH STONE AVENUE
TUCSON, ARIZONA 85701-1207**

JACKSON JENKINS
DIRECTOR

PH: (520) 740-6500
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PUBLIC SEWER AND HIGHWAY EASEMENT AGREEMENT

Pima County ("County") owns a twenty-foot non-exclusive sewer easement in, under and across, Granada Avenue in the City of Tucson ("City"), which easement was recorded October 24, 1985, in Book 7646 at Page 793 of the Pima County Recorder's Office, Pima County, Arizona ("Sewer Easement"). The Sewer Easement traverses a City highway easement established June 1, 1964, by City of Tucson Resolution No.5802 ("Highway Easement"). See, diagram titled, "Tucson Modern Streetcar Exhibit", attached hereto as Exhibit "A" (the "Map").

Pima County has reviewed the City's proposed construction of permanent streetcar facilities improvements over, along, and adjacent to the area of the Sewer Easement, as shown on the Map. Specifically, as part of the Tucson Modern Streetcar Project ("Project"), the City plans to construct and operate a Modern Streetcar Stop Platform ("Streetcar Stop") within Granada Avenue right of way, but located almost completely outside of and beyond the City's Highway Easement. The City also plans to construct and maintain as part of the Project, concrete streetcar

tracks, concrete track slabs, and related facilities ("Streetcar Tracks"). The Streetcar Tracks traverse the Sewer Easement almost entirely within the area of the Highway Easement.

The following terms and requirements apply only to the City's obligations relative to the Streetcar Stop, and specifically exclude obligations of either party as to the Streetcar Tracks, which obligations shall be governed by existing agreements and law, including but not limited to the license issued by City to County for sewer lines and related facilities, entered June 26, 1978, as part of a City/County Intergovernmental Agreement, amended in March, 1982 (the "IGA"), the common-law doctrine of prior rights, and any further law or written agreement between the parties, to the extent applicable. Notwithstanding the foregoing, County, in the performance of maintenance, repair, and replacement of sewer facilities, will to every extent practical avoid disturbing the surface transportation assets located adjacent to and within the Highway Easement, including but not limited to work which would require the removal of the Streetcar Tracks or impair the City's use thereof. As to the Streetcar Stop, Pima County Regional Wastewater Reclamation Department ("PCRWRD") field maintenance crews must be able to access any manholes and conveyance lines (existing or newly constructed) with large sewer maintenance vehicles. Field crews will excavate the sewer in the event that a blockage occurs that cannot be cleared by conventional sewer cleaning techniques. The functionality of this agreement for any future access requirements, including new construction, repair, replacement and maintenance of the public sewer system, is necessary.

By signing this agreement City acknowledges that in the event that PCRWRD, its agents or assignees need to remove any or all obstruction(s) caused by the Streetcar Stop, removal, repair and replacement of all or part of the Streetcar Stop, to the extent necessary, will be at the City's expense; and PCRWRD shall not be responsible for replacing or repairing that part of the Streetcar Stop removed, or for any costs associated with service interruption to the SunLink system related to the removal, repair or replacement of the Streetcar Stop.

In consideration for PCRWRD, on behalf of County, allowing the Streetcar Stop to share use of the Sewer Easement, City and County agree to the following conditions:

1. City will not construct additional further permanent structures within that part of the Sewer Easement located outside of the Highway Easement in this vicinity without the written consent of PCRWRD.
2. If health and safety are not an issue, County will provide at least 10 business days' advance notification in writing to the City, Transportation Director, concerning the nature of the work to be performed and the proposed schedule of commencement and completion. City shall have the option to do the work at its expense, if agreed upon in advance by the parties.

3. In the event immediate access is required to protect public health and safety, any obstructions and/or encroachments are subject to immediate removal upon County providing voice or email notification to the City Transportation Director, said notice to be followed in writing within 48 hours..
4. In the event City prevents or denies access to the Sewer Easement to County, City agrees to pay actual and reasonable County attorney's fees and costs incurred to enforce by way of litigation its access rights under the Sewer Easement and this Agreement, relative to the Streetcar Stop, as well as any environmental fines incurred by Pima County resulting from access delays.
5. In the event repair or replacement of the public sewer is necessary, construction access shall not be limited to the width of the Sewer Easement, but shall be limited to only that area reasonably necessary to complete the work under the circumstances.
- 6 To the greatest extent authorized under applicable law, each party agrees to defend, indemnify and hold harmless the other party, its officers, officials and employees for liability from and against claims, damages, losses and expenses of any nature whatsoever (including but not limited to reasonable attorney fees, court costs, the costs of appellate proceedings, and all claim adjusting and handling expense), relating to, arising out of, resulting from or alleged to have resulted from the indemnifying party's acts, errors,

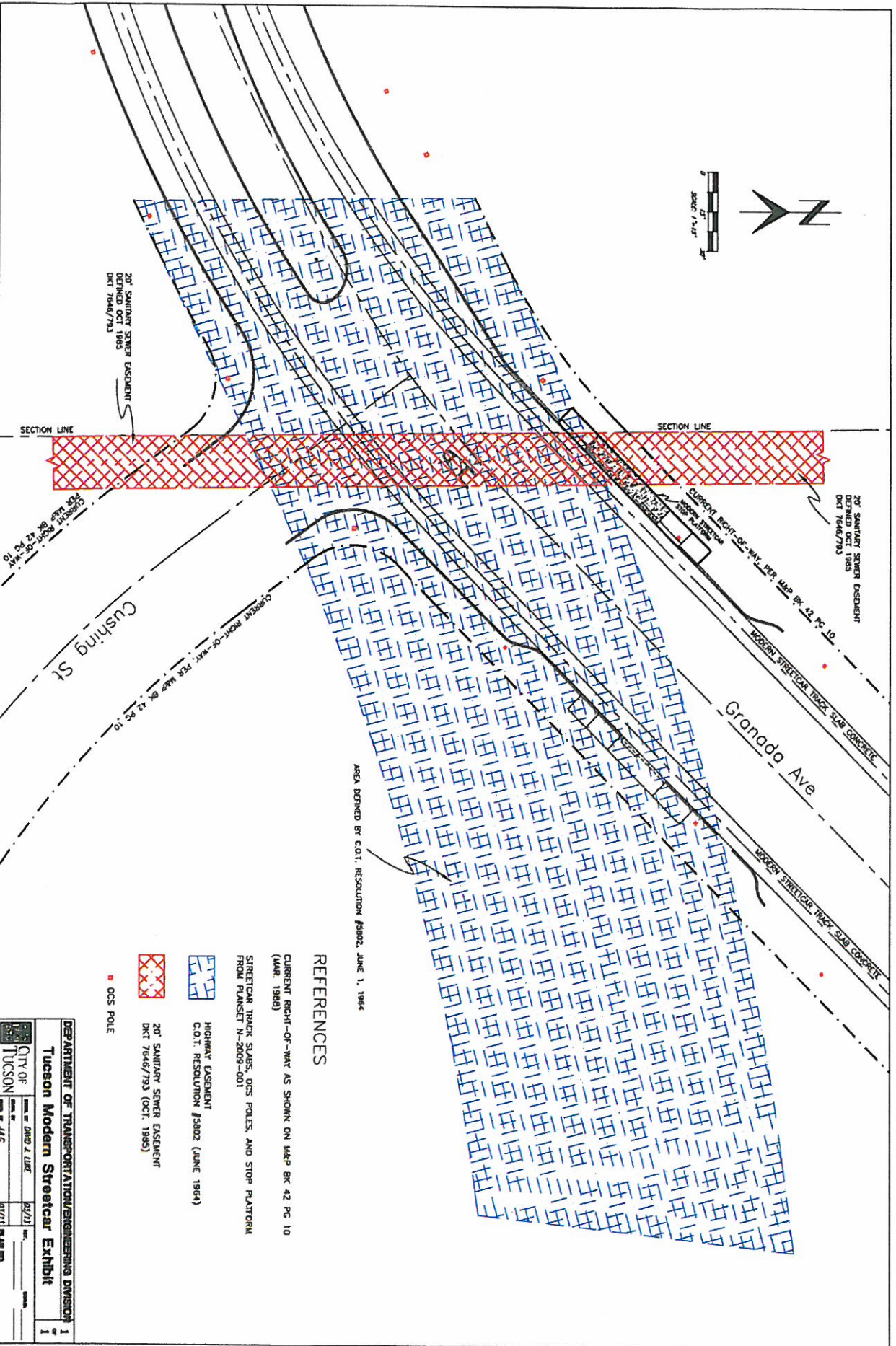
mistakes or omissions relating to any action or inaction of the indemnifying party under this Agreement, including but not limited to work or services in the performance of this Agreement by any subcontractor or anyone directly or indirectly employed by or contracting with the indemnifying party or a subcontractor or anyone for whose acts any of them may be liable. Nothing in this Agreement is intended to indemnify a party from and against the results of that party's sole negligence.

- 7 This Agreement shall be binding on successive owners of the parties' respective interests in real property.
- 8 This Agreement shall be notarized and recorded at the Pima County Recorder's Office.


This document constitutes the entire agreement between the parties pertaining to the subject matter hereof; and all prior or contemporaneous agreements and understandings, oral or written, are hereby suspended and merged herein. This Agreement may be modified, amended, altered or extended only by written amendment signed by the parties.

IN WITNESS WHEREOF, the parties have affixed their signatures to this Agreement on the date written below.

Exhibit "A"



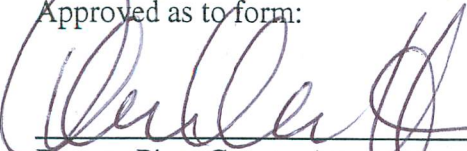
By 
City of Tucson Authorized Representative


Jackson Jenkins, Director
Pima County Regional Wastewater Reclamation Department

6/4/13

Date

Approved as to form:



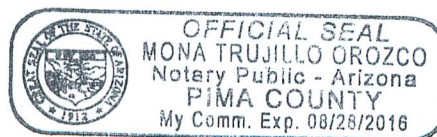
Deputy Pima County Attorney
CHARLES WESSELHOFT

6-4-13

Date

This instrument was acknowledged before me this 4th day of June, 2013 by Jackson Jenkins (Name), Director (RWRD) (Title), Pima County.

My Commission Expires: 8/28/2016



ATTEST:

For Pima County:

Clerk of the Board

By: _____
Chairman, Pima County Board of Supervisors

Date: _____

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by the Chairman, Pima County Board of Supervisors for Pima County, a political subdivision of the State of Arizona.

(Seal)

Notary Public