

**When Recorded Return To:
Land Rights Management - PAB348
P. O. Box 52025
Phoenix, Arizona 85072-2025**

CONSENT TO USE OF EASEMENT PROPERTY

This Consent to Use of Easement Property (“Consent”) is made and entered into as of the _____ day of _____, 2019 (“Effective Date”), by and between SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an agricultural improvement district organized and existing under the laws of the State of Arizona (“SRP”), and CITY OF GLENDALE, an Arizona municipal corporation (“Glendale”).

RECITALS

1. SRP has existing easements for existing and future electrical facilities within Section 12, Township 2N, Range 1E of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, which are evidenced through that certain instrument recorded at Docket 663, page 549, in the official records of Maricopa County, Arizona (the “Easement”). The property encumbered by the Easement shall be referred to as the “Easement Property”.
2. Glendale will accept and hold title to certain Improvements within the Easement Property, as presented and described in the Offsite Paving Plans for Bethany Ranch, Project Number 01-0288001, dated June 26, 2018, by Coe & Van Loo Consultants, Inc., and approved by Glendale on July 6th and 7th, 2018 (“Offsite Plans”).
3. SRP is willing to consent to the installation, use and maintenance of certain Improvements described on the Offsite Plans, upon the terms and conditions set forth in this Consent.

AGREEMENT

In consideration of the mutual promises, undertakings, agreements, and other terms and conditions herein, the adequacy of which is hereby acknowledged by each party, the parties agree as follows:

1. SRP CONSENT TO INSTALLATION OF IMPROVEMENTS

- 1.1 SRP consents to the installation, use, and maintenance of the Improvements within the Easement Property, as shown on the Offsite Plans (“Offsite Improvements”), subject to the following conditions:
 - (a) All softscape landscaping (i.e., ground cover, shrubs, and other plants) within the Easement Property shall be from SRP’s list of approved landscaping, and shall be submitted for prior approval by SRP, with respect to location and type.

- (b) Glendale at all times shall provide SRP with access to the SRP facilities within the Easement Property, in a manner that allows SRP to provide for the safety of its employees and contractors who operate, repair and maintain the SRP facilities. Without limiting the foregoing, SRP shall have the right to close all lanes of traffic adjoining the SRP facilities in the locations subject to the Easement if such closure is reasonably necessary for SRP to safely access one or more SRP facilities.

Notwithstanding anything herein to the contrary, Glendale shall maintain all clear areas and comply with all SRP rules and regulations applicable to the installation of Improvements (including landscaping Improvements) within the Easement Property. In the event of a conflict between (i) the Offsite Plan and (ii) Glendale's obligation to maintain clear areas and comply with SRP rules and regulations, Glendale's obligation described in item (ii) shall control.

- 1.5 The term "Improvements" shall mean any pavement, structure, landscaping, which includes without limitation both hardscape and softscape (i.e., soil, shrubs, and other plants), or other thing constructed, installed or placed upon the ground or any additions or alterations thereto.

2. CONDITIONS OF GLENDALE'S USE

- 2.1 Glendale shall not make additions to, change the location of, or otherwise alter, modify, or reconstruct the Offsite Improvements located within the Easement Property, without first having received written approval from SRP's Land Department of Glendale's drawings and narrative describing work to be done, such approval not to be unreasonably withheld. Glendale shall not make any additional changes to the Offsite Plan, or add or modify Improvements or uses within the Easement Property without obtaining the prior written approval of SRP.
- 2.2 Any and all of the Offsite Improvements shall be located and constructed so as not to interfere with SRP's use of or access to the SRP facilities located within the Easement Property.
- 2.3 Any and all of the below-ground facilities located within the Easement Property shall be designed and constructed to allow SRP's heavy equipment to be driven and set up over any and all of the Easement Property without damage to such below-ground facilities. SRP requires that below-ground facilities be designed to withstand a minimum loading of 320 pounds per square inch (PSI) applied to the ground surface under a crane outrigger pad measuring 27 inches in diameter.
- 2.4 Glendale, at its sole cost, shall at all times maintain proper clearances between SRP's energized electrical facilities and the Offsite Improvements, and Glendale personnel and equipment as required by the National Electrical Safety Code (NESC), Arizona law, Federal law (OSHA), and all other applicable rules, codes or regulations.

- 2.5 Glendale acknowledges that it is aware of and understands the potential problems associated with the installation, use, and maintenance of the Offsite Improvements near SRP's electric Facilities, including, but not limited to, potential problems related to induced and/or transferred voltages and/or currents. Glendale agrees and represents that it (and not SRP) shall be fully responsible for the effective mitigation of all such problems. Additionally, SRP reserves its rights under the Easement to modify existing, or construct future, electrical Facilities, and SRP shall not be responsible for the effectiveness of Glendale's mitigation system or for its continued effectiveness if and when SRP exercises such rights.
- 2.6 Any and all above-ground metal that is accessible to the public shall be properly grounded and coated with an effective insulating material. Glendale shall periodically inspect and maintain said grounding and insulation.

3. RELOCATION OF THE SITE PLAN IMPROVEMENTS

- 3.1 Glendale, at its cost, agrees to relocate, modify, or remove any of the Offsite Improvements that unreasonably interfere with SRP's ability to use the Easement Property for the purposes described in the Easement. Any portion of the Offsite Improvements will be deemed to unreasonably interfere with SRP's ability to use the Easement Property if SRP reasonably determines that such portion of the Site Plan Improvements interferes with SRP's ability to access, maintain, reconstruct, repair, replace, remove, operate and use the SRP Facilities in compliance with the National Electrical Safety Code (NESC), Arizona law, Federal law (OSHA), and all other applicable rules, codes or regulations, including without limitation all SRP rules, regulations, and procedures relating to safety. In such event, SRP shall provide written notification to Glendale, and Glendale shall respond promptly and exercise due diligence to complete such relocation, modification, or removal work within the time specified by SRP in its written notification. SRP will not unreasonably require relocation, modification, or removal by Glendale.
- 3.2 In the event of an emergency or other situation in which the above written notification is not practical, SRP may relocate, modify, or remove any of the Offsite Improvements that unreasonably interfere with SRP's ability to use the Easement Property for the purposes described in the Easement, as described in Section 3.1 above. SRP will not unreasonably relocate, modify, or remove the Site Plan Improvements.
- 3.3 SRP shall retain the right, but not the obligation, to trim, cut, and clear away any trees, bushes, cacti, or other landscaping located within or encroaching in any way upon or above the Easement Property, without prior written notification, whenever necessary (in SRP's reasonable discretion) for the convenient and safe exercise of its rights granted by the Easement.

4. INDEMNIFICATION AND RELEASE

- 4.1 To the fullest extent not prohibited by law, Glendale shall indemnify and hold harmless SRP for, from and against any damages or loss (whether such damage or loss is to person or property) or any losses, damages, expenses, and liabilities for damages to property or injury or death of any person, including but not limited to property or personnel of SRP and Glendale (“Liability”), caused by, arising out of, or otherwise related to the Offsite Improvements, except for Liability caused by the gross negligence or willful misconduct of SRP.
- 4.2 Glendale expressly agrees that SRP shall not be responsible for (and Glendale shall and hereby does release SRP from) any loss or damage to the Offsite Improvements that SRP may cause while exercising its rights granted by the Easement. SRP shall use reasonable care to avoid or minimize such damage.

5. GENERAL TERMS AND CONDITIONS

- 5.1 Except as otherwise defined in this Consent, all initial capitalized terms shall have the meanings ascribed to them in the Easement.
- 5.2 The covenants and agreements in this Consent shall run with and burden the land and shall extend and inure in favor and to the benefit of, and shall be binding on, Glendale and SRP and their respective successors and assigns.
- 5.3 This Consent constitutes the entire agreement between Glendale and SRP with respect to the granting of SRP’s consent for the installation, use, and maintenance of the Offsite Improvements, and no understandings or obligations with respect to the Offsite Improvements, not expressly stated or referenced in this Consent shall be binding. No verbal agreements or conversations with any officer, agent, or employee of either party shall affect or modify any of the terms or obligations in this Consent.
- 5.4 This Consent may not be modified or any provision waived except by written agreement executed by both SRP and Glendale. The waiver by either party of any breach or failure to provide full performance under any of the terms and conditions of this Consent, or the failure of a party to exercise, or any delay in exercising, any rights or remedies provided herein or by law, or the failure of a party to notify the other properly in the event of a breach hereunder shall not be construed as a waiver of any other term or condition herein, or of any subsequent or continuing breach of the same or any other term or condition.
- 5.5 Nothing in this Consent is intended or shall be construed to confer upon or give any person or entity other than SRP and Glendale (and their respective successors, assigns, and lessees) any right, remedy or claim under or by reason of this Consent. All the terms, covenants and conditions of this Consent shall be for the sole and exclusive benefit of SRP and Glendale (and their respective successors, assigns, and lessees).

- 5.6 This Consent shall be interpreted, governed by, and construed in accordance with the substantive and procedural laws of the State of Arizona, without regard to conflicts of law principles. To the fullest extent permitted by law, each party hereby irrevocably waives any and all rights to a trial by jury and covenants and agrees that it will not request a trial by jury with respect to any legal proceeding arising out of or relating to this Consent. Notice is hereby given of the applicability of A.R.S. 38-511.
- 5.7 SRP shall retain all rights granted to it by the terms of the Easement, and this Consent shall in no way diminish any of those rights.
- 5.8 All indemnifications and releases set forth in this Consent shall survive any termination of this Consent.

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