

2000 FEB 19 10:00 AM

FIRST SUPPLEMENT TO LICENSE AGREEMENTS

Adopted by City Resolution Nos. 10848, 10849
and County Resolution No. 1979-101

WHEREAS, the City of Tucson, Arizona, hereinafter called City, and Pima County, Arizona, hereinafter called County, have entered into an agreement dated June 26, 1979, hereinafter called Transfer Agreement, whereby the City transferred to County the City sewerage system; and

WHEREAS, pursuant to and in conjunction with the Transfer Agreement each party executed a license with the intent to grant to the other the use of its public rights of way and to allocate the costs of relocation of certain improvements existing in the rights of way; and

WHEREAS, a dispute has arisen about the interpretation of paragraph 5(C) of the licenses; and

WHEREAS, both parties agree that an operating agreement is necessary between the parties in order to resolve the dispute with the least possible cost and the maximum benefit to each party and the general public.

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements herein, City and County agree as follows:

I

In the license for City use of County rights of way executed in conjunction with the Transfer Agreement, Paragraph 5(C) reads as follows:

County agrees to bear the cost of any relocation or adjustment of City water facilities caused by County construction projects undertaken in County right of way.

1. For purposes of interpreting the license executed in conjunction with the Transfer Agreement, the term "County construction projects" in Paragraph 5(C) means County sewer construction projects.

2. The costs of the adjustment or relocation of City water facilities caused by any County construction project in County rights of way, other than sewer construction projects shall be shared by the City and the County in the following manner:

- A. Where adjustment or relocation maintains the existing water capacity, the cost shall be shared equally.
- B. Where adjustment or relocation increases the existing water service capacity, the cost of the adjustment or relocation shall be shared equally, except the City shall bear the cost to the extent attributed to the increased capacity.
- C. Where an existing water facility is in a substantially deficient condition as determined in good faith by City, then City and County shall negotiate in good faith on a case by case basis the additional percentage of the cost to be borne by City attributed to the increase in service life of the new water facility.

3. The work required in the adjustment or relocation of the City water facilities will be performed by the County or the City at the City's option. The party performing the work shall bill the other party for its share of the costs, as set forth above. Upon receiving a bill, the party will acknowledge its receipt and verify or deny its accuracy. Any objection to the amount of bill must be filed in writing with the other party within 15 days from the date of receipt or any objection shall be deemed waived. Any dispute over the amount owed in connection with project shall not affect the application or validity of this agreement as to any

other project. All bills shall become due and payable within 30 days of receipt. However, if a party does not have funds available in its current budget for the payment of a bill, the party shall provide for the payment of the bill in the subsequent year's budget and the bill shall be paid as soon as it is reasonably feasible after the adoption of the budget in the subsequent fiscal year.

4. In connection with the location of future water facilities by the City in County rights of way, the County shall provide the City with basic engineering data, such as topographic or existing highway profile information. The County shall conceptually establish future highway grades and alignment to assist the City in locating water lines so as to minimize the need for future relocation or adjustment. It is understood by City that such conceptually established future highway grades are subject to change upon development of final highway improvement plans. The City shall bury its water lines at standard depths from the established future highway grades. The City shall have the option to bury its water lines at less than the standard depth from the conceptually established future highway grade, in which case any future cost of relocation or lowering is to be solely at the City's expense. This choice of option by City to bury at less than standard depth shall be documented by the city on a project-by-project basis.

5. County agrees to bear the cost of replacing pavement removed and valve box and vault adjustment in conjunction with the adjustment or relocation of City water facilities incidental to County projects.

6. All costs incurred in connection with projects commenced by improvement districts in the County which result from the adjustment and relocation of City water facilities

and which do not increase the capacity of the water facility shall be borne by the improvement district. Costs incurred in connection with projects commenced by improvement districts which increase the capacity, except for fire flow requirements, of the City water facilities shall be borne by the City to the extent of the cost attributed to the increased capacity of the water facility. However, if City has the water facility scheduled or programmed for replacement, the City shall bear the entire cost of replacement.

II

In the license for County use of City right of way executed in conjunction with the above-mentioned Transfer Agreement, Paragraph 5(C) reads as follows:

City agrees to bear the costs of any relocation or adjustment of County sewer facilities caused by City construction projects undertaken in City right of way.

1. For purposes of interpreting the above-mentioned license executed in conjunction with the Transfer Agreement, the term "City construction projects" in Paragraph 5(C) means City water construction projects.

2. Costs of the adjustment or relocation of County sewer facilities caused by any City construction project other than water construction projects in City rights of way shall be shared by the City and the County in the following manner:

- A. Where adjustment or relocation maintains existing nominal sewer capacity, the cost shall be shared equally.
- B. Where adjustment or relocation increase the existing sewer service capacity, the cost of the adjustment or relocation shall be shared equally, except the County shall bear the

cost to the extent attributed to the increased capacity.

- C. Where an existing sewer facility is in a substantially deficient condition as determined in good faith by County, then City and County shall negotiate in good faith on a case-by-case basis the additional percentage of the cost to be borne by County attributed to the increase in service life of the new sewer facility.

3. The work required in the adjustment or relocation of the County sewer facilities will be performed by the County or the City at the County's option. The party performing the work shall bill the other party for its share of the costs as set forth above. Upon receiving a bill, the party will acknowledge its receipt and verify or deny its accuracy. Any objection to the amount of bill must be filed in writing with the other party within 15 days from the date of receipt or any objection shall be deemed waived. Any dispute over the amount owed in connection with the project shall not affect the application or validity of this agreement as to any other project. All bills shall become due and payable within 30 days of receipt. However, if a party does not have funds available in its current budget for the payment of a bill, the party shall provide for the payment of the bill in the subsequent year's budget and the bill shall be paid as soon as it is reasonably feasible after the adoption of the budget of the subsequent fiscal year.

4. City agrees to bear the cost of replacing pavement removed and of manhole and/or clean out adjustments in conjunction with the adjustment or relocation of County sewer facilities incidental to City projects.

5. All costs incurred in connection with projects commenced by improvement districts in the City which result from the adjustment and relocation of County sewer facilities and which do not increase the capacity of the sewer facility shall be borne by the improvement district. Costs incurred in connection with projects commenced by improvement districts which increase the capacity of the County sewer facilities shall be borne by the County to the extent of the cost attributed to the increase in capacity of the sewer facility except where the increase in capacity substantially benefits property within the improvement district.

III

For a project funded either partially or entirely by federal funds, and to the extent that the relocation or adjustment of a water or sewer facility is a project eligible cost, the portion of the cost of the relocation or adjustment to be paid from federal funds shall be the ratio of the federal funds to the total project cost times the cost of the relocation or adjustment. The remainder of the cost of the water or sewer facility relocation or adjustment shall be shared by the County and the City as set forth in this agreement for other non-federally funded projects.

PIMA COUNTY

By: Sam Lina
Chairman

ATTEST:

Eugene H. Steer
Clerk of the Board

Dated: March 23, 1982

APPROVED AS TO FORM:

Bob Silver
Bob Silver, Special Counsel
to Civil Division
County Attorney

Pete Pearman
Pete Pearman
Deputy County Attorney

