

# **MESA CITY CODE TITLE 9 PUBLIC WAYS & PROPERTY**

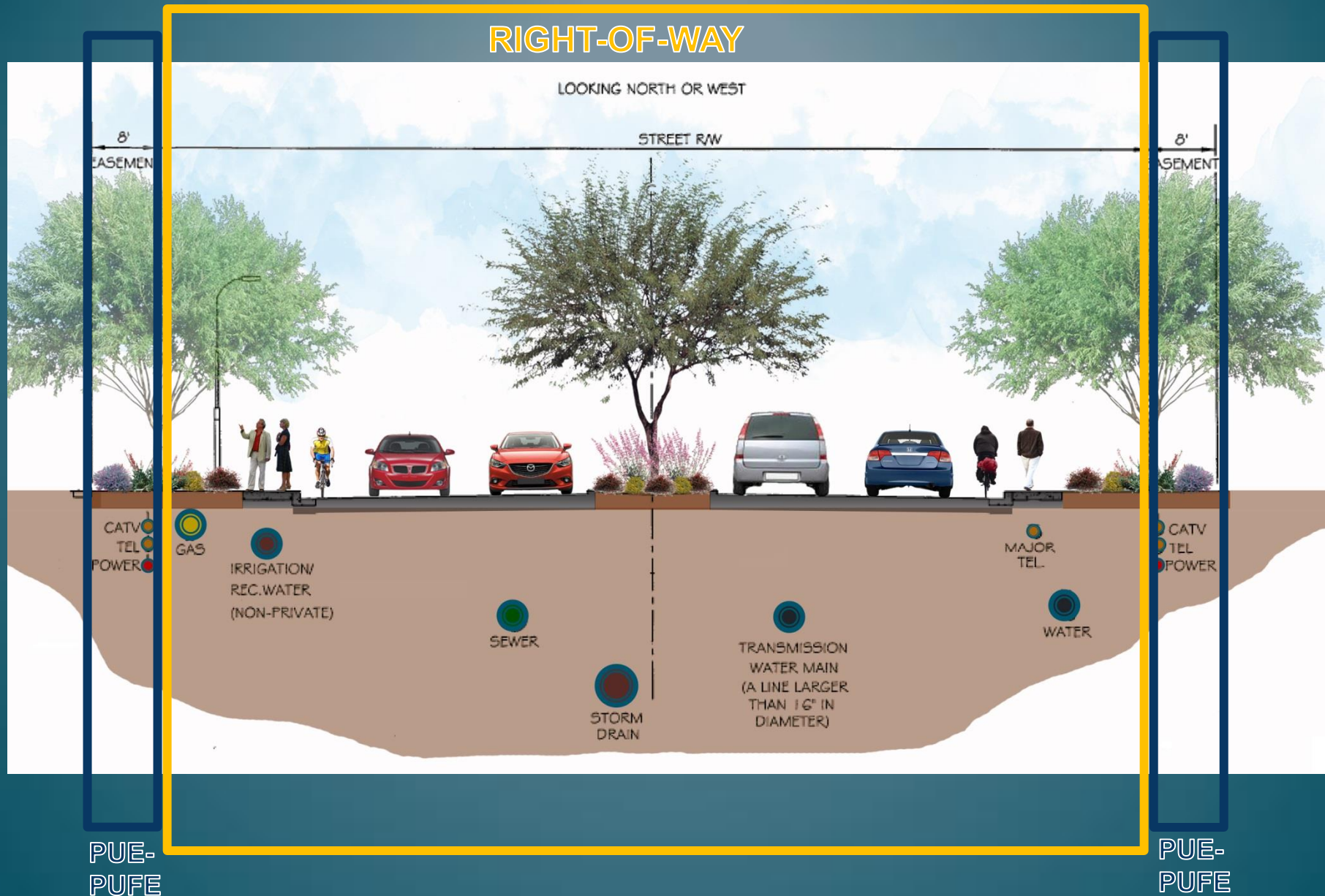
**PROPOSED MODIFICATIONS TO CHAPTER 1**

**ENGINEERING / TRANSPORTATION DEPARTMENTS  
MARCH 19, 2015**

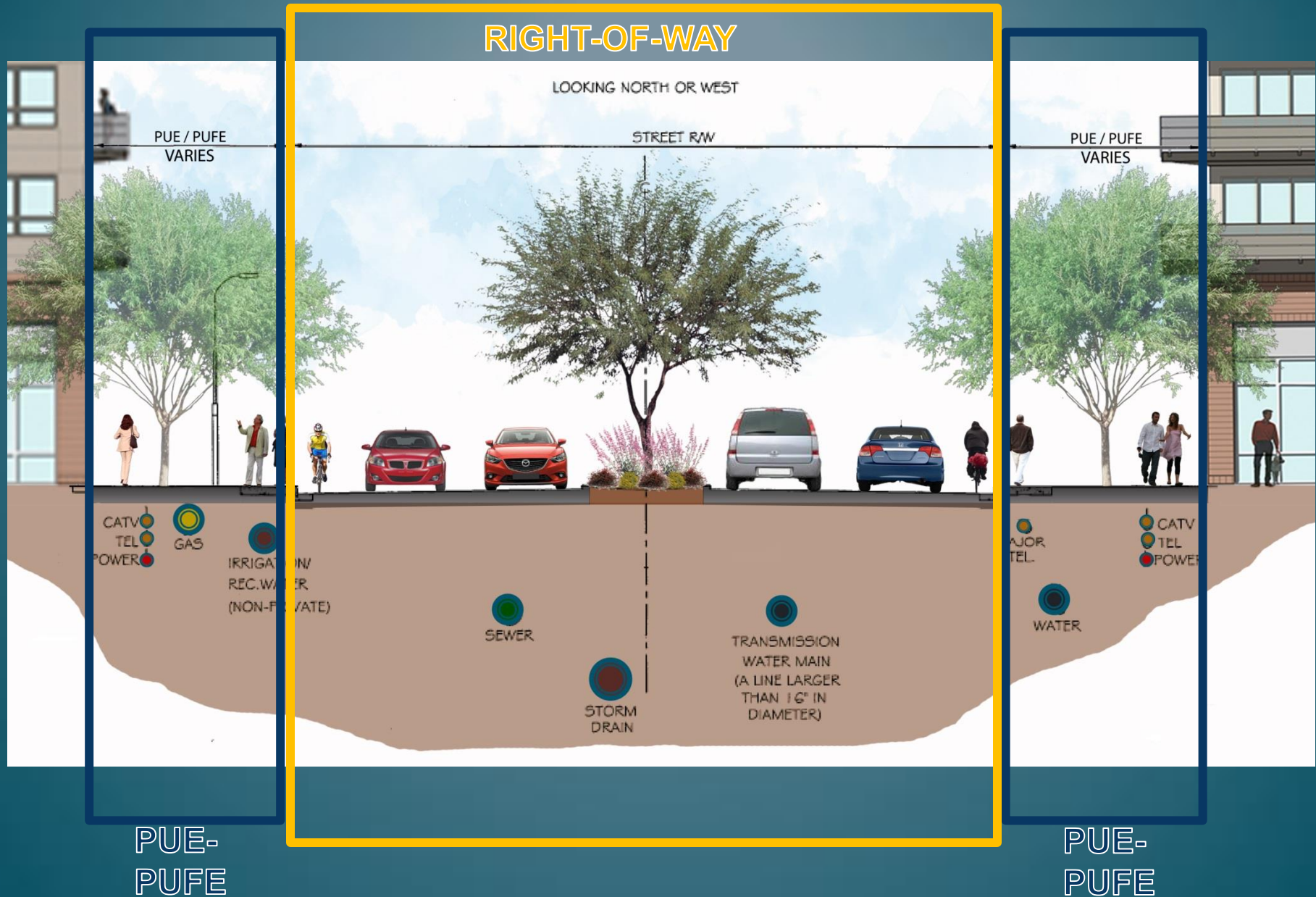
# TERMS ...

- **RIGHT-OF-WAY (ROW)**
- **PUBLIC UTILITY EASEMENT (PUE) /  
PUBLIC UTILITY & FACILITY EASEMENT (PUFE)**

# STANDARD STREET CROSS SECTION



# FORM-BASED CODE STREET CROSS SECTION

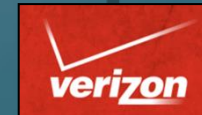


# WHO IS IN MESA ROW & PUE / PUFEE?

- **CITY STREET & AMENITIES**  
(pavement, curb, storm drain, street lights, sidewalks, bus, paths, ped lighting, decorative features, etc.)
- **CITY UTILITIES**  
(water, sewer, electric, gas, chilled water, irrigation)



## NON-CITY PARTIES





# HOW ARE RIGHT-OF-WAY USERS MANAGED?

- CITY CODE & ENGINEERING STANDARDS
- LICENSE AGREEMENTS
- FRANCHISE AGREEMENTS
- EASEMENTS / PRIOR RIGHTS
- PERMITS
- STATE AND COMMON LAW

# WHY REVISE TITLE 9, “RIGHT-OF-WAY”?

- **IMPROVE COORDINATION WITH RIGHT-OF-WAY USERS**
- **CONSISTENT BEST PRACTICES**
- **PAVEMENT PRESERVATION**
- **RIGHT-OF-WAY/PUBLIC EASEMENT OVERSIGHT**

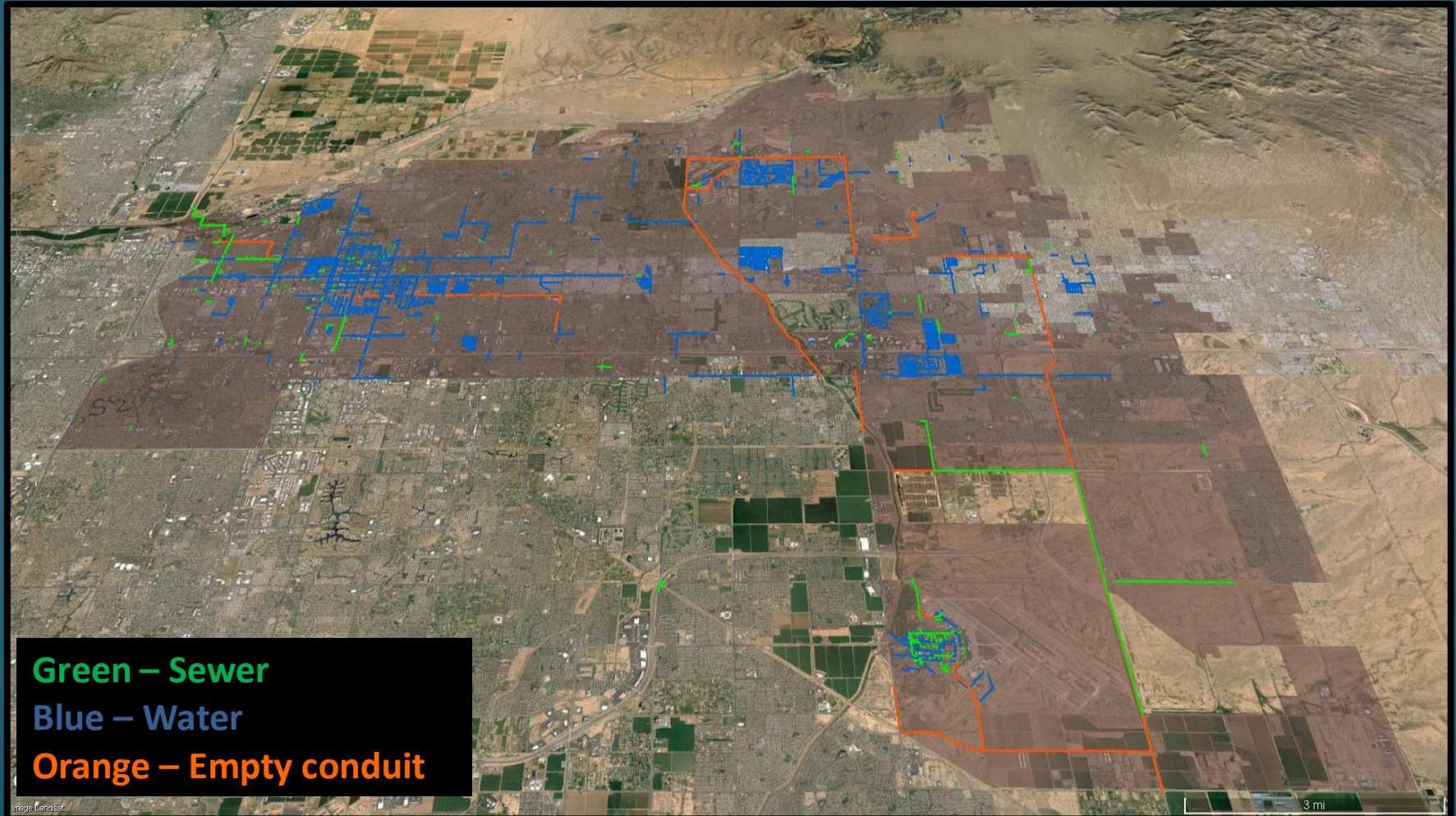
**IMPROVED COORDINATION**



# OUTREACH & PREVENTION....

- IMPLEMENTED QUARTERLY UTILITY MEETINGS
  - ✓ SHARE CITY CIP / MAINTENANCE PROJECT INFO
  - ✓ BETTER COORDINATE PROJECTS - DIG ONCE
- INTERACTIVE MAPS SHOWING NEW STREETS & FUTURE CAPITAL PROJECTS
- CAPITAL PROJECT UTILITY - SPECIFIC MEETINGS & NOTIFICATIONS
- ENCOURAGE & COORDINATE JOINT TRENCHING
- ASSIST WITH FINDING ALTERNATIVE UTILITY ROUTES
- INNOV8 PROGRAM TO REUSE ABANDONED UTILITIES & EXISTING CITY CONDUITS

# INNOV8 PROGRAM: REPURPOSE CITY ASSETS



# **CONSISTENT BEST PRACTICES**

# STUDIED BEST PRACTICES OF OTHER CITIES WITH COMPARABLE UTILITY PARTNERS:

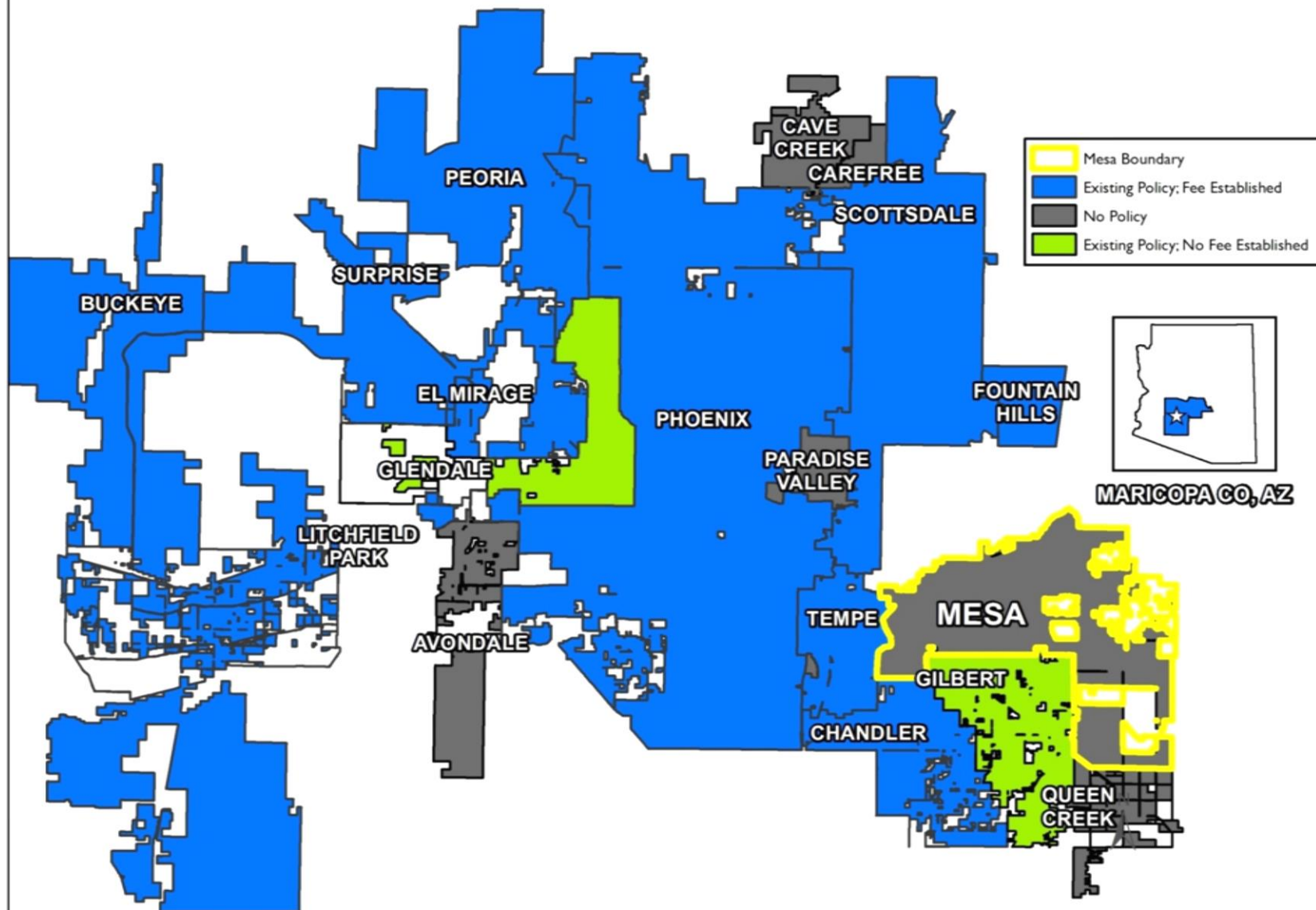
- SCOTTSDALE
- CHANDLER
- GILBERT
- PHOENIX
- TUCSON
- GLENDALE
- PEORIA
- TEMPE
- ADOT
- MCDOT
- SAN ANTONIO
- SAN DIEGO
- LAS VEGAS
- COLORADO SPRINGS
- ALBUQUERQUE

# UPDATED VALLEY CITIES BEST PRACTICES ....

Comparison Provision	Buckeye	Chandler	El Mirage	Fountain Hills	Gilbert	Glendale	Litchfield Park	Proposed Mesa	Paradise Valley	Peoria	Phoenix	Scottsdale	Surprise	Tempe
ROW users pay for relocation (ROW)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
ROW USERS reimburse City when inaccurate location of facilities causes delay	No	No	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes
Charges, or reserves the right to charge a PRF	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Length of time the PRF is charged	5 yrs.	6 yrs.	5 yrs.	5 yrs.	n/a	n/a	7 yrs.	5 yrs.	n/a	30 mos.	30 mos.	4 yrs.	2 yrs.	7 yrs.
Waives the PRF when pavement cut does not result from poor planning	No	No	No	No	n/a	n/a	No	No	n/a	Yes	Yes	No	No	No
Prohibits pavement cuts in years 1 and 2 unless any one of 4 exceptions applies	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	No	No	Yes	Yes	No
Provides for a 5 <sup>th</sup> exception in the discretion of the City Engineer	Yes	No	Yes	No	n/a	n/a	No	Yes	n/a	n/a	n/a	No	Yes	No
Requires mill and overlay for pavement cuts in year 1	Yes	Yes	Yes	No	No	No	Yes	Yes	No	No	No	No	Yes	No
ROW users may choose to mill and overlay in years 1 and 2	No	No	No	n/a	n/a	n/a	Yes	Yes	n/a	n/a	n/a	n/a	Yes	n/a
Excepts potholes from the mill and overlay requirement in year 1	No	Yes	No	n/a	n/a	n/a	Yes	Yes	n/a	n/a	n/a	n/a	Yes	n/a



## Other Cities with Pavement Restoration Fees



# PAVEMENT PRESERVATION



# PAVEMENT IMPACTS

- PAVEMENT CUTS REDUCE PAVEMENT LIFE BETWEEN 15% TO 23%
- REDUCTION OF PAVEMENT LIFE INCREASES MAINTENANCE COSTS
- RIDE QUALITY DECREASES

*Lindsay Rd. / Southern Ave.*

*Latex Modified Slurry  
Placed in 2012  
Pavement*

*Cut in 2012*



# RECENT STREET / STREETScape PROJECTS

STREET	TOTAL CONSTRUCTION COST
MESA DR. AND SOUTHERN AVE.	\$8,414,000
SOUTHERN AVE. IMPROVEMENTS (Phase I)	\$9,557,000
DOBSON RD. AND UNIVERSITY DR.	\$4,237,000
ANNUAL PAVEMENT MAINTENANCE	\$16,000,000

# INTRODUCE PAVEMENT RESTORATION FEE

- CUTS PROHIBITED IN PAVEMENT LESS THAN 2 YEARS OLD, EXCEPT FOR EMERGENCIES, ESSENTIAL SERVICES, AND NEW SERVICES
- A TIERED FEE STRUCTURE BASED ON PAVEMENT AGE AND THE SIZE OF THE CUT FOR FIRST 5 YEARS
- PROPOSED FEE WILL RECOVER APPROXIMATELY 50% OF ORIGINAL PAVEMENT COST

# CURRENTLY PROPOSED PAVEMENT RESTORATION FEES

Pavement Age < 12 months (0-1 years)		
Cut Size	< 200 SY	> 200 SY
Fee	\$1,800 + \$20/SY	\$1,800 + \$18/SY
For cuts within the first year, the fee is in addition to the mill and overlay		
Pavement Age 12 months - 24 months (1-2 years)		
Cut Size	< 200 SY	> 200 SY
Fee	\$1,600 + \$20/SY	\$1,600 + \$18/SY
Pavement Age 24 months - 36 months (2-3 years)		
Cut Size	< 200 SY	> 200 SY
Fee	\$1,300 + \$15/SY	\$1,300 + \$14/SY
Pavement Age 36 months - 60 months (3-5 years)		
Cut Size	< 200 SY	> 200 SY
Fee	\$1,000 + \$10/SY	\$1,000 + \$8/SY



# Example

203 S.Y.  
(1830 S.F.)  
Pavement Cut

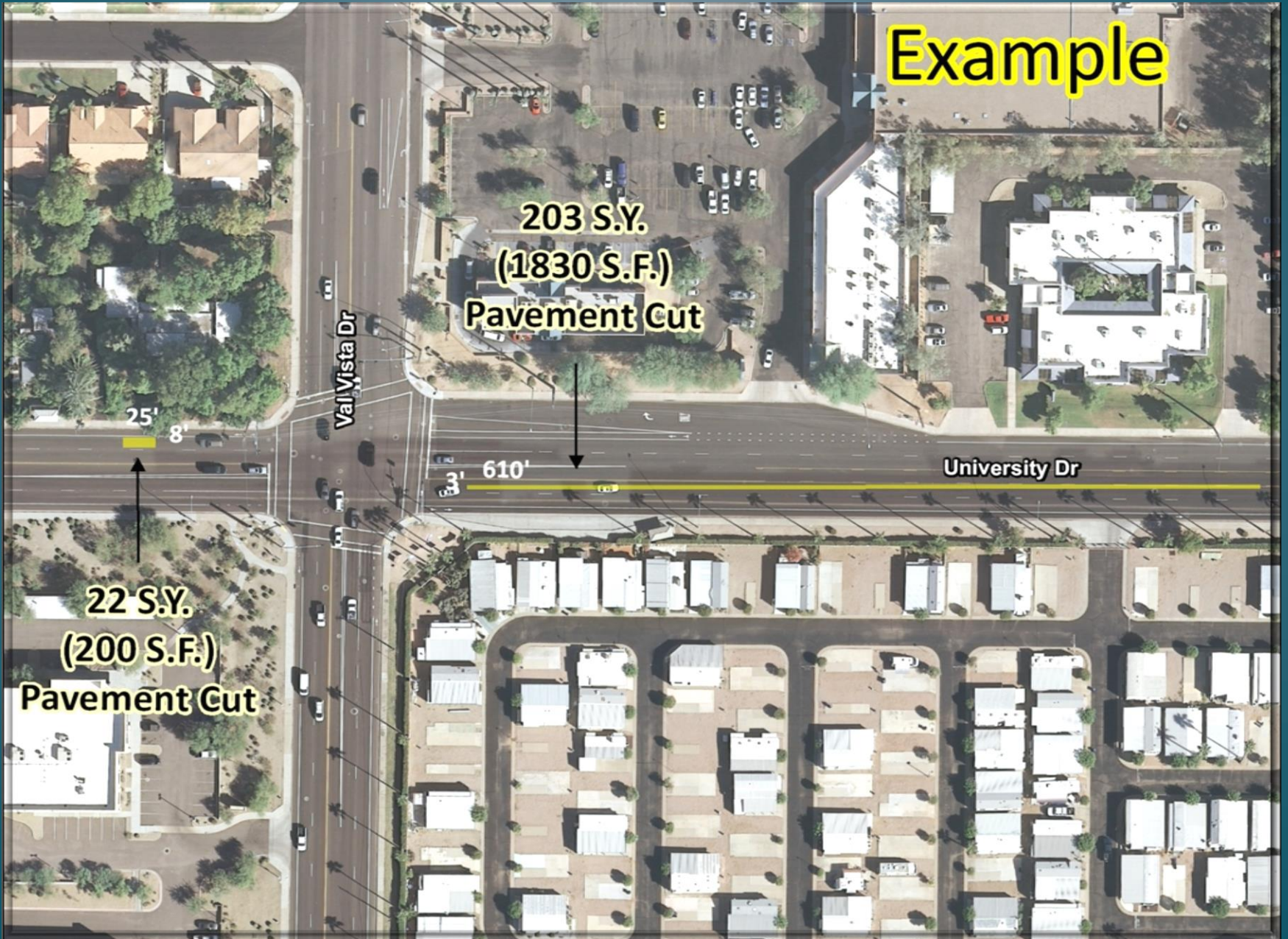
610'

University Dr

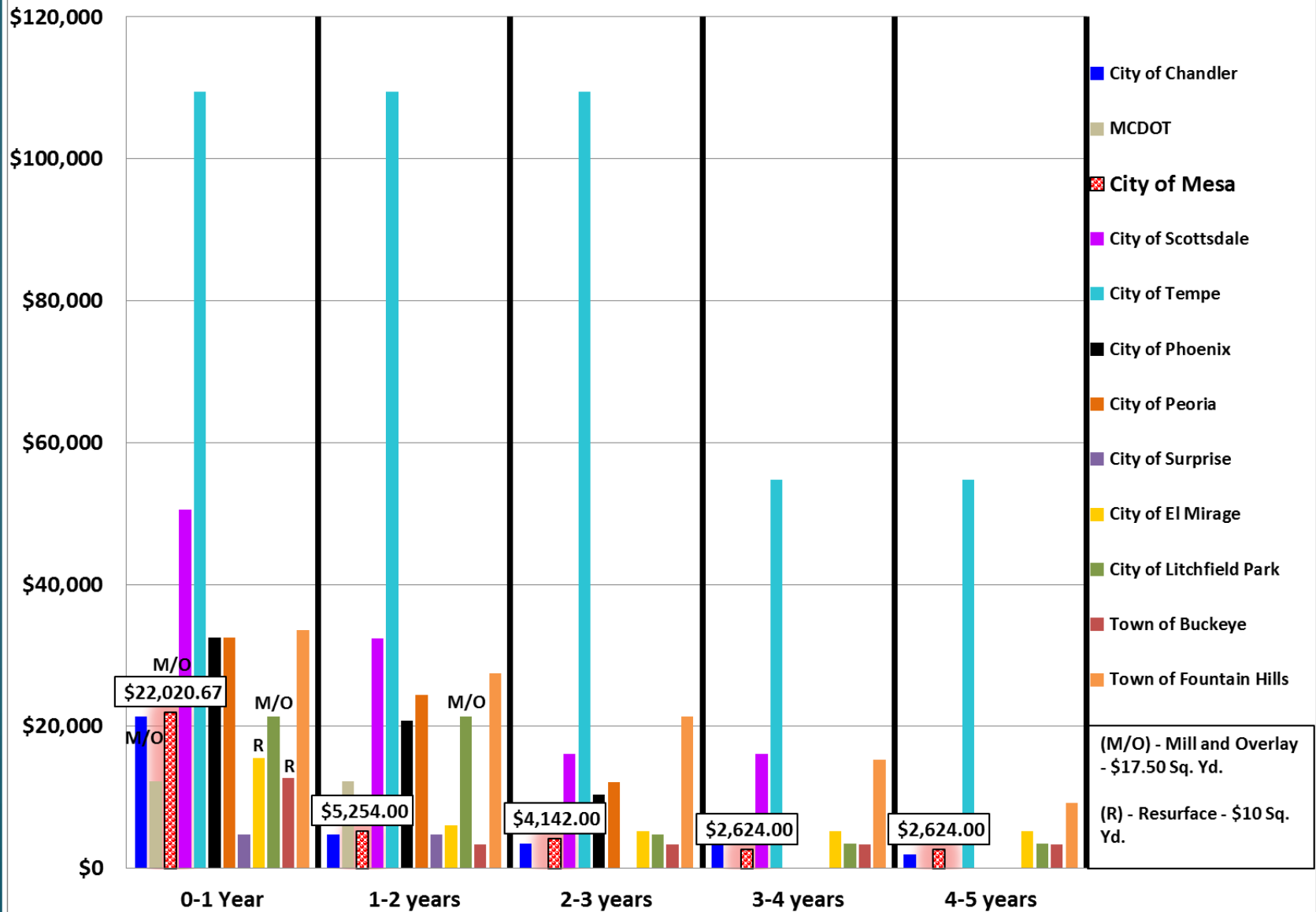
Val Vista Dr

25' 8"

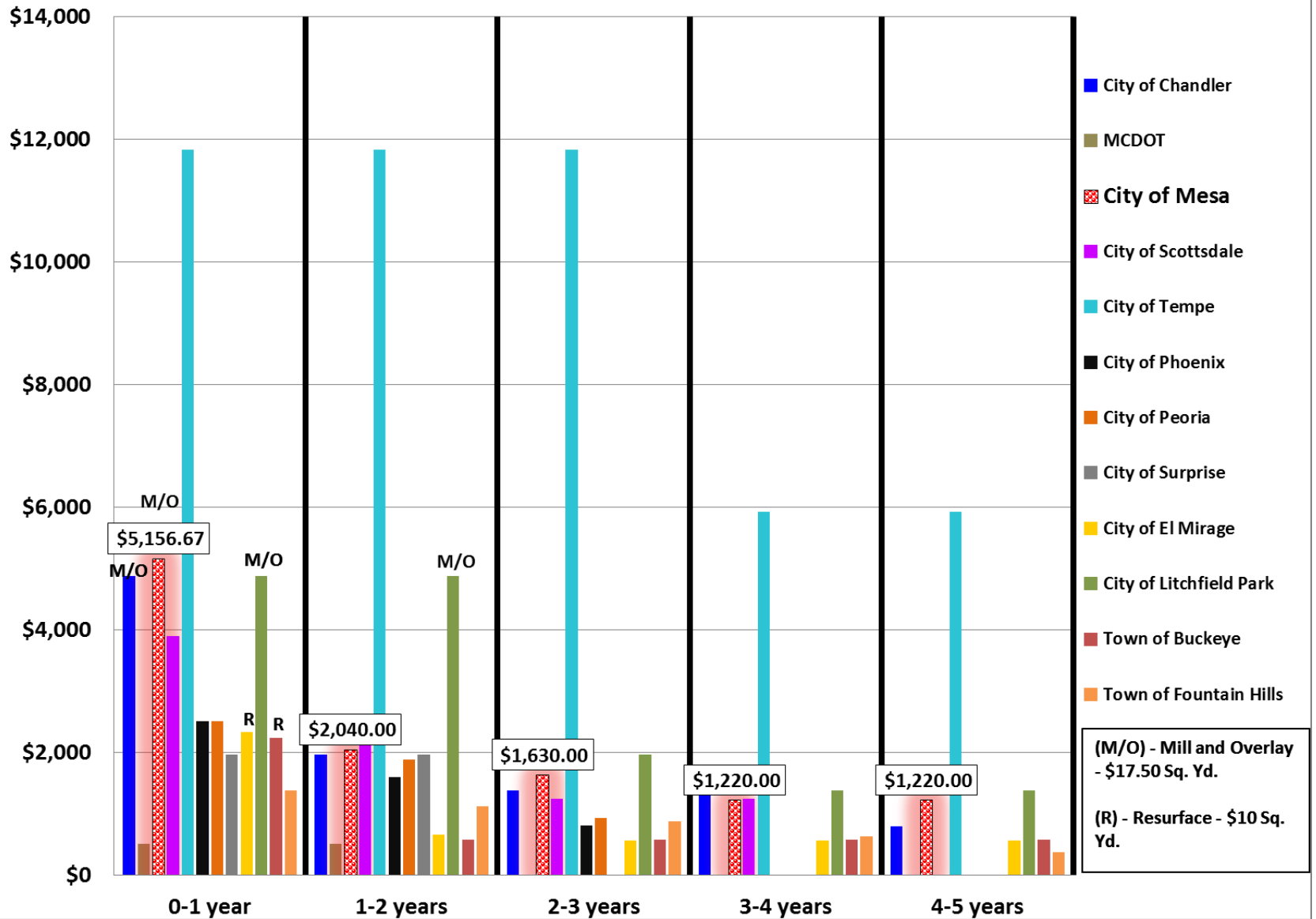
22 S.Y.  
(200 S.F.)  
Pavement Cut



## Pavement Restoration Fee Example for 203 square yards

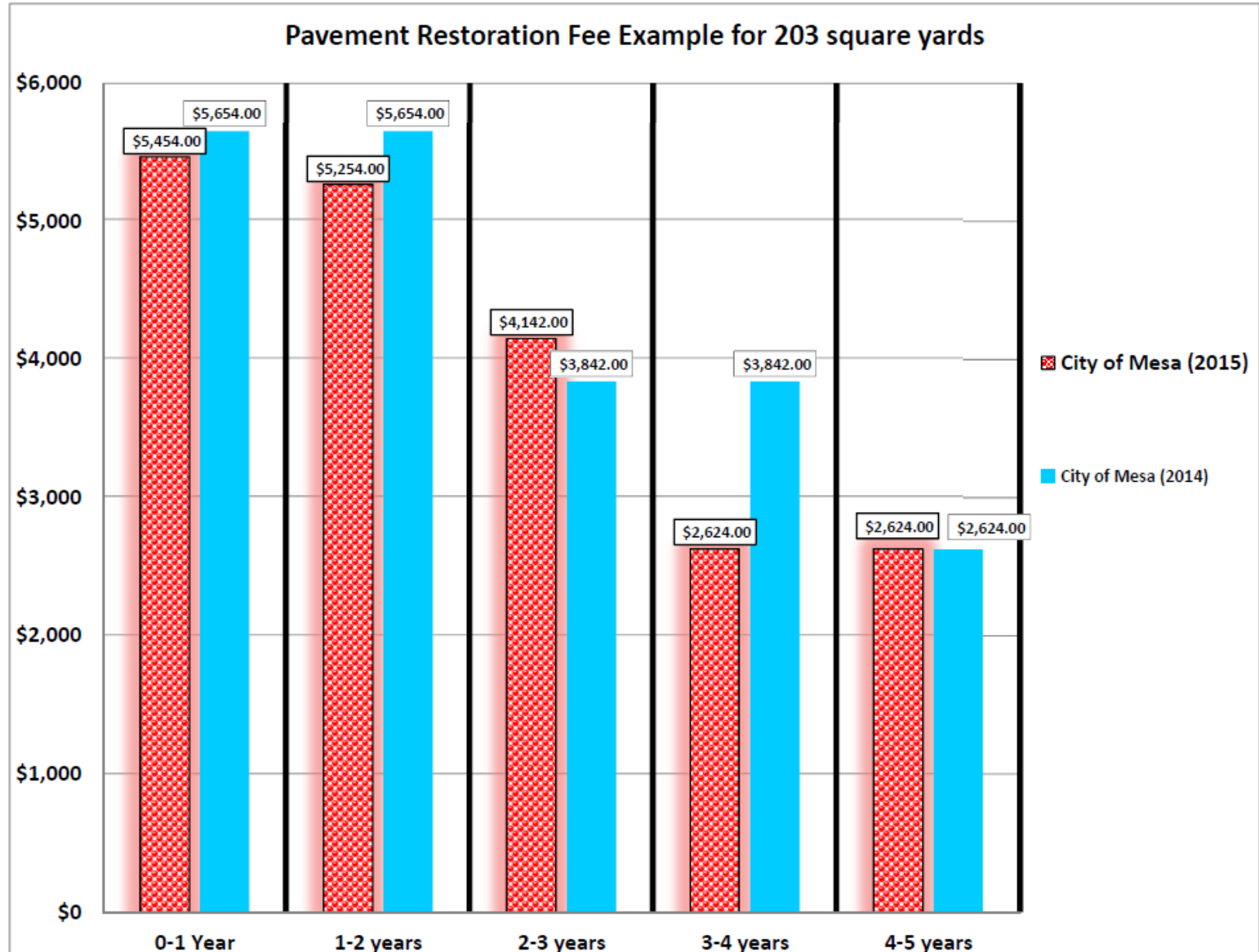


## Pavement Restoration Fee Example for 22 square yards

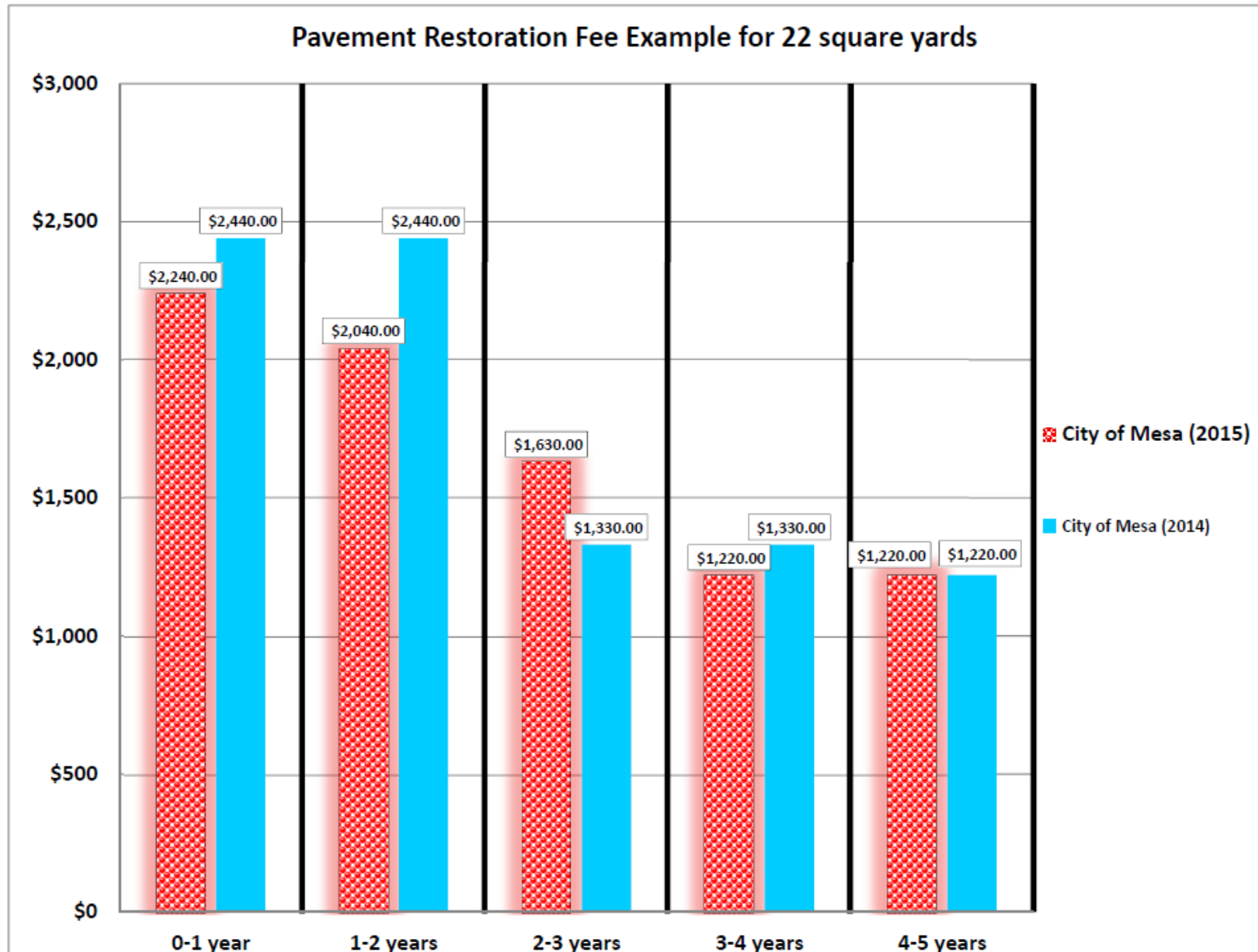




# RATE COMPARISON



# RATE COMPARISON



# **RIGHT-OF-WAY/PUBLIC EASEMENT OVERSIGHT**

# MOST COMMON CITIZEN / BUSINESS CALLS IN IN RIGHT-OF-WAY & EASEMENTS



- WORKING WITHOUT PERMIT
- UNBURIED LINES
- OPEN EXCAVATIONS
- LACK OF PUBLIC NOTICE





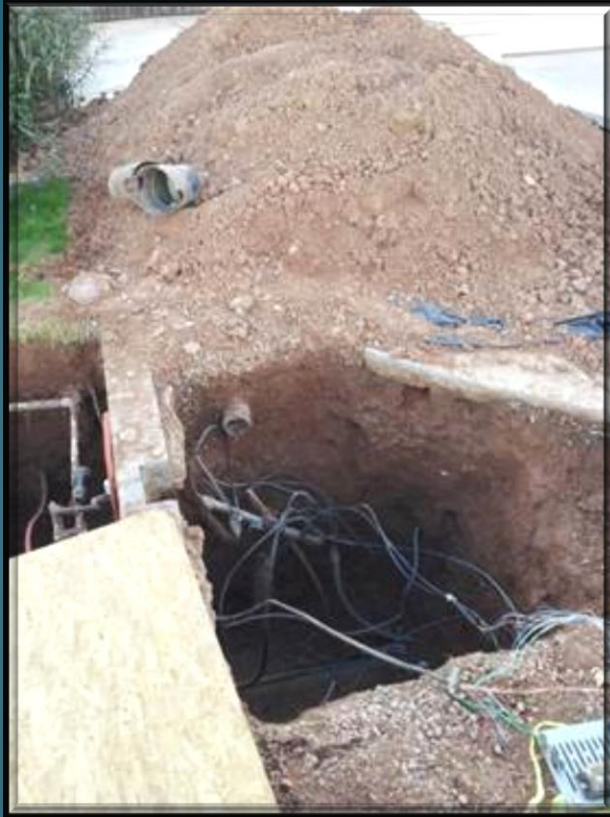


**CONCERN:**      **LOW HANGING WIRES, NEC SAYS 15.5' MINIMUM**  
**ISSUE:**        **IMPEDES PUBLIC SAFETY & SOLID WASTE VEHICLES**  
**CALLS:**        **10 PER MONTH (AVERAGE)**



**CONCERN: EXPOSED CABLES**  
**ISSUE: SAFETY, APPEARANCE**  
**CALLS: 15 PER MONTH (AVERAGE)**





**CONCERN:** EXCAVATIONS IN FRONT YARDS

**ISSUE:** SAFETY, APPEARANCE

**CALLS:** 25 CALLS IN FIRST TWO WEEKS





# INDUSTRY INPUT

# TITLE 9 MODIFICATIONS PROPOSED AT FEBRUARY 2014 SAT MEETING

- **PAVEMENT PRESERVATION PROGRAM**
- **APPEALS PROCESS**
- **WORK IN CITY ROW/PUE/PUFE SHALL CONFORM TO  
CITY STANDARDS**
- **ROW/PUE/PUFE USERS SHALL MAINTAIN ACCURATE  
RECORD DRAWINGS**
- **ROW/PUE/PUFE USERS WILL REIMBURSE THE CITY  
FOR ACTUAL COSTS ASSOCIATED WITH  
LOCATING FACILITIES**

# TITLE 9 MODIFICATIONS PROPOSED AT FEBRUARY 2014 SAT MEETING

- **THE CITY RESERVES ITS PRIOR AND  
SUPERIOR RIGHTS**
- **RIGHT-OF-WAY USERS WILL RELOCATE  
THEIR EXISTING FACILITIES THAT  
CONFLICT WITH A CITY PROJECT  
AT NO COST TO THE CITY**
- **THE CITY ENGINEER IS AUTHORIZED TO  
ISSUE A STOP WORK ORDER**

# INDUSTRY INPUT INCORPORATED

1. REDUCED LENGTH OF FEE FROM 6 YEARS TO 5 YEARS
2. INCLUDED DEFINITION OF TERM “PUBLIC EASEMENT” TO BE SIMILAR TO THE TOWN OF GILBERT
3. INCLUDED A 3 BUSINESS DAY APPEAL DECISION FOR ENGINEERING & A 5 BUSINESS DAY APPEAL DECISION FOR CITY MANAGER OR DESIGNEE AND ABILITY TO APPEAL TO COUNCIL COMMITTEE

# INDUSTRY INPUT INCORPORATED

4. INCLUDED OPTION TO CUT PAVEMENT IN THE FIRST YEAR OF NEW STREET IF CITY ENGINEER AGREES MILL & OVERLAY AND ALTERNATE ROUTE IS MORE EXPENSIVE THAN CUT +MILL & OVERLAY
5. INCLUDED OPTION TO DO ONE POTHOLE IN HALF MILE MAT AND NOT MILL & OVERLAY WITHIN THE FIRST YEAR OF PAVEMENT LIFE
6. REDUCED FEES TO MATCH RATE STRUCTURE PROPOSED BY INDUSTRY, 50% COST RECOVERY

# TITLE 9 PROVISIONS STILL UNDER DISCUSSION

- PUBLIC UTILITY EASEMENT  
DEFINITION
- PUE RELOCATION  
RESPONSIBILITY

# **DISCUSSION, FEEDBACK, & NEXT STEPS**



# LANGUAGE FROM OTHER VALLEY CITY ORDINANCES

**Chandler CC 46-2.6(F):** Any encroachment including but not limited to pipes, conduit, wire, cable, appurtenances or other structures or facilities installed or maintained in, on or under any public place, right-of-way or other public surface or subsurface drainage facility, shall be relocated, at the **sole expense of the permittee/owner of the utility, promptly** upon request of the city as may be necessary to facilitate an public purpose, public utility or city project.

**Glendale CC 10-67:** When the city uses its prior and superior right to the streets and public ways, a licensee shall **move its property located in the streets and public ways, at its own cost, to such a location as the city directs.**

**El Mirage CC 151.008(F):** Any encroachment including but limited to pipes, conduit, wire, cable, appurtenances, or other structures or facilities installed or maintained **in, on, or under any public place, right-of-way, or highway, shall be relocated, at the sole expense of the permittee,** as may be necessary to facilitate a public purpose or any city project.

**Phoenix CC 5B-11(e):** Upon the **City's request, provider's facilities will be relocated at provider's expense,** unless State law expressly requires otherwise. Upon the City's request, by a time specified by the City, if the provider fails to move its facilities, the City may do so and may bill the provider the costs therefor and the provider shall pay those costs within thirty days after its receipt of the invoice therefor.

**Fountain Hills CC 13-8(F)(5):** **A licensee must remove, replace or modify at its own expense,** any of its facilities within any public right-of-way when required to do so by the town manager to allow the town to change, maintain, repair, improve or eliminate a public thoroughfare. Nothing in this article shall prevent licensee from seeking and **obtaining reimbursement from sources other than the town.**

**Scottsdale CC 7-70(e):** **...construction, repair, or removal of a sewer or water main, the improvement, all such poles, wires, conduits, or other appliances and facilities, shall be removed or replaced in such manner as shall be directed by the city so that the same shall not interfere with the said public work of the city, and such removal or replacement shall be at the expense of the licensee herein.**

**Gilbert CC 10-5(d):** Location and relocation of facilities in rights-of-way or utility easements.  
(6) *Town's facilities.* . . . **Upon the town's request, the permittee's facilities will be relocated at permittee's expense (unless state law expressly requires otherwise).** Upon the town's request, by a time specified by the town, if the **permittee fails to move its facilities, the town may do so and will bill the permittee the costs therefor and the permittee shall pay those costs within 30 days...**

**Tempe CC : d)** When the city invokes its prior superior right to the rights-of-way, the provider shall move its facilities located in the rights-of-way, **at its own cost, to such a location as the city directs.**

# LANGUAGE FROM EXISTING FRANCHISE/LICENSE AGREEMENTS

## AT&T

4.11: When the Licensors uses its prior superior right to the Public Streets, **the Licensee shall move its property that is located in the Public Streets at its own cost**, to such a location as the Licensors directs. . . . (the definition of “Public Streets” includes public easement.)

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## CenturyLink

4.2 **Licensee shall, at its expense**, protect, support, disconnect, relocate, or remove any of its property when required by the City Manager (or designee) by reason of traffic conditions, public safety or welfare; Street vacation; freeway or street construction or repair; change or establishment of street grade; installation of sewers, drains, water pipes, power lines, signal lines, transportation facilities, tracks, or any other types of structure or improvements by public agencies.

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## Cox Communication

3.2: **Licensee shall, at its expense**, protect, support, disconnect, relocate, or remove any of its property when required by the City Manager (or designee) by reason of traffic conditions, public safety or welfare; Street vacation; freeway or street construction or repair; change or establishment of street grade . . .

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## Southwest Gas

3.2 (B): **Grantee shall bear the entire cost of relocating its facilities located on public right of way or public utility easements** subject to 7.2 of this Franchise agreement. (7.2 discusses capital expenditure fund)

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## Zayo

2.5: **City shall not bear any cost of relocation of Licensee's Telecommunications System for whatever reason**. . . . Licensee shall promptly remove, as reasonably as possible, the designated portions of the Telecommunications System, and if requested by City, Licensee, at its sole cost and expense, will restore the sidewalks and other rights-of-way damaged by Licensee's removal and relocation of the Telecommunications System to a condition substantially comparable to the condition before removal and relocation of the Telecommunications System.

# EXISTING CASE LAW

## Case Law Concerning Utilities' Relocation Costs

Qwest Corp. v. City of Chandler, 222 Ariz. 474, 217 P.3d 424 (App. 2009).

Chandler notified Qwest that it would have to relocate its existing facilities, both underground and overhead, to accommodate a City project. Qwest filed a notice of claim and a lawsuit alleging inverse condemnation. Qwest claimed that it was not obligated to relocate at its own expense because it was a public utility operating under a pre-statehood franchise that was granted in 1877. The Arizona Court of Appeals decided that Qwest was responsible to pay the relocation costs because the common law rule allocates relocation costs to the utility.

Qwest v. City of Tucson, 2015 WL 65273 (App. 2015). A petition for review has been filed at the Arizona Supreme Court

The State Land Department granted Tucson a right-of-way in 1956 for Houghton Road. In 1987 State Land granted Qwest an easement through the same land area and Qwest installed facilities there. Tucson later told Qwest that it intended to widen Houghton Road, and that Qwest would have to relocate at its own expense. Qwest sued the City for trespass, inverse condemnation and interference with contract. Following the same common law rule, the Court of Appeals decided that Qwest was responsible for relocation costs.

# RATE STRUCTURE PROPOSED AT FEBRUARY 2014 SAT MEETING

## Pavement Age: < 24 months (0-2 years)

Cut Size	< 200 SY	> 200 SY
Fee	\$2,000 + \$20/SY	\$2,000 + \$18/SY

## Pavement Age: 24 months - 48 months (2-4 years)

Cut Size	< 200 SY	> 200 SY
Fee	\$1,000 + \$15/SY	\$1,000 + \$14/SY

## Pavement Age: 48 months - 72 months (4-6 years)

Cut Size	< 200 SY	> 200 SY
Fee	\$1,000 + \$10/SY	\$1,000 + \$8/SY