



## SUSTAINABILITY & TRANSPORTATION COMMITTEE

March 19, 2015

The Sustainability & Transportation Committee of the City of Mesa met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on March 19, 2015 at 8:27 a.m.

### COMMITTEE PRESENT

Kevin Thompson  
Alex Finter  
Dave Richins

### COMMITTEE ABSENT

None

### STAFF PRESENT

Kari Kent  
Dee Ann Mickelsen  
Jim Smith

#### 1. Items from citizens present.

A number of citizens addressed the Committee under Item 2-b.

#### 2-a. Hear a presentation, discuss and provide a recommendation on a Telecommunications License Agreement with Electric Lightwave, Inc.

City Engineer Beth Huning introduced Right-of-Way (ROW) Manager Lori Greco, Assistant City Attorney II MaryGrace McNear, and Transportation Director Lenny Hulme, who were prepared to respond to questions.

Ms. Huning displayed a PowerPoint presentation (**See Attachment 1**) and stated that Electric Lightwave, LLC (ELI) is requesting a new license agreement to install a communication network in the City's ROW and public utility easements. She advised that the license agreement is a five-year term with an option to extend for an additional five years. She also added that as part of the agreement, ELI will provide the City with one working pair of fibers in each new excavation, transaction privilege taxes and permitting fees. (See Page 2 of Attachment 1)

Ms. Huning also displayed a map of existing ELI electrical conduit alignments throughout the City and noted that ELI has no plans for further project extensions. (See Page 3 of Attachment 1)

It was moved by Committeemember Richins, seconded by Committeemember Finter, to recommend the Telecommunications License Agreement with Electric Lighwave, Inc. be forwarded to the full Council for consideration.

Carried unanimously.

Chairman Thompson thanked staff for the presentation.

2-b. Hear a presentation, discuss and provide a recommendation on Pavement Preservation and Right-of-Way City Code Modifications.

City Engineer Beth Huning displayed a PowerPoint presentation (**See Attachment 2**) and provided an update on code modifications specific to the terms of Rights-of-Way (ROW), Public Utility Easements (PUE) and Public Utility/Facility Easements (PUFE). She also introduced Transportation Director Lenny Hulme and Assistant City Attorney II MaryGrace McNear, who were prepared to assist with the presentation.

Ms. Huning explained the definition of a ROW as a fee title owned by the City or dedicated to the City and at times granted as part of other agreements. She advised that lands are held in trust by either the city, town, or county under Arizona Revised Statutes §9-254.

Ms. Huning pointed out that the Form Base Code also applies to Pacific Proving Grounds and to Dobson Ranch. She noted that the Dobson Ranch area is over 25 years old and many of the ROW lines are behind curbs and sidewalks and behind those are easements. She added that an easement can vary up to 30 feet and can include street lights, fire hydrants, bus pullouts, decorative features, landscaping and a variety of other street functions and amenities.

Ms. Huning identified various companies, utilities and amenities in the ROW, PUE and PUFE areas and how ROW are managed and governed. (See Pages 4 through 5 of Attachment 2)

Ms. Huning stated that the reason to revise Title 9, Chapter 1 is to improve coordination and management with ROW users, to have consistent best practices, for pavement preservation, and ROW/public easement oversight. (See Page 7 of Attachment 2)

Ms. Huning displayed the Outreach and Prevention activities as follows:

- Implemented quarterly utility meetings
- 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 and existing city conduits

Ms. Huning displayed a map of abandoned utilities and exiting City conduits that the INNOV8 Program will reuse and eventually lease. (See Page 10 of Attachment 2)

Ms. Huning remarked that staff reviewed studies and examined best practices from other area cities on ROW and easement governance to be consistent with best practices. **(See Attachment 3)**

Ms. Huning displayed a map of other valley cities with Pavement Restoration Fees and noted that pavement cuts reduce pavement life between 15% to 23%. She added that annual pavement maintenance will cost \$16 million. (See Page 14 through 17 of Attachment 2)

Ms. Huning briefly highlighted the proposed Pavement Restoration Fee and reported that cuts will be prohibited in pavement less than two years old. She pointed out that the private utility partners have proposed a counter rate structure from staff's 2014 recommendation. (See Pages 19 through 24 of Attachment 2)

In response to a question from Chairman Thompson, Ms. Huning stated that based on current engineering standards there are no street cuts for five years.

Ms. Huning continued with the presentation and displayed the most common calls in ROW and public easements, which included unburied lines, open excavations and lack of public notice. She stated that some citizens do not understand that they have easements on their properties until construction. She added that the City serves as the responsible party to hold the land in trust for the owners and that property owners look to the City to help them resolve these issues.

Ms. Huning stated that in February 2014 staff brought forward terms in Title 9 to the Committee and provided an update of the industry's input and the following modifications were proposed:

- 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 of their facility
- ROW/PUE/PUFE Users will reimburse the City for actual costs associated with locating facilities.
- The City Reserves its prior and superior rights
- ROW 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

Ms. Huning stated that staff held numerous meetings with the utility industry and have come to a consensus in reducing the length of pavement preservation fee from six years to five years. (See Page 33 of Attachment 2)

Mr. Hulme stated that initially staff requested seven years for pavement preservation to maintain top conditions of streets and roads. He noted that a longer lasting asphalt product was selected which has a higher up front cost, but will have a longer life cycle.

Ms. Huning continued with the presentation and explained that staff has included a definition of the term "public easement", which is similar to the Town of Gilbert. She noted that the proposed ordinance will include a three day appeal process for an engineering decision, a five day appeal

process for a City Manager decision, and the option to appeal to the Sustainability and Transportation Committee.

Ms. Huning highlighted the industry input incorporated in the ordinance, which includes an option to cut pavement in the first year of a new street if the utility can show the City Engineer that the new alignment costs more than cutting the new pavement and milling and overlaying. (See Page 34 of Attachment 2)

In response to a question from Committeemember Finter, Ms. Huning confirmed that the only item that staff and industry leaders did not agree on is easements.

Ms. McNear advised that the City Attorney's Office conducted extensive research relative to the public utility easement definition and PUE relocation responsibility to be consistent with other cities in the valley. She noted that the changes will allow road project or ROW expenses to be paid for by the utility company that has incurred the cost. She added that due to the resistance from the industry, staff took another look at the language and confirmed that the language is indeed consistent with Tempe and Phoenix. She indicated that the ordinance defines a dedication of an easement, which is not found in other area cities. (See Pages 35 through 39 of Attachment 2)

Chairman Thompson commented that the biggest concern is the interpretation of a public easement.

In response to a question from Committeemember Finter, Ms. McNear stated that an easement is an interest in land for a specified use. She noted that if an easement is dedicated for a public purpose, the only grantee that can accept it is the government entity (County, City or Town). She added that case law is clear in terms of ROW but less clear in terms of easement.

In response to a question from Chairman Thompson, Ms. Huning responded that if the City is going to extinguish an easement, the City notifies anyone located in the easement, in case there are any concerns. She added that extinguishments require Council approval.

In response to a question from Committeemember Richins, Ms. McNear stated that the ordinance will not change the easement process, however, if there are no prior rights to an easement, there would be a fee associated with moving it. She advised that under license and franchise agreements, utility partners pay for relocations for both easements and ROW.

Ms. Huning explained that Southwest Gas has a 25 year agreement that voters approved, which includes an annual fund revenue that places the money in trust and allows the City to utilize the funds to pay for relocation of easements.

City Attorney Jim Smith noted that the current draft ordinance says "public easement is a public utility easement of the City", which is Gilbert's model. He cited two primary models used by other cities: the use of a definition for both an easement and a ROW; and the other model for the definition of ROW also pulls in the easement concept throughout the code.

Ms. McNear stated that the City of Phoenix uses the definition of "ROW" as roads, streets and alleys and all other dedicated public ROW and public utility easements of the City.

In response to a question from Committeemember Richins, Ms. McNear stated that the original City easement language was intended to capture utility crossings and noted that the definition is lengthy and confusing.

Discussion ensued regarding the definition of language used by various cities and the objection to the changes by the public utility companies.

(Chairman Thompson declared a brief recess at 9:23 a.m. The meeting reconvened at 9:31 a.m.)

Chairman Thompson acknowledged the citizens who submitted speaker cards.

Eric Emmert, Vice President of Dorn Policy Group Inc. and representing the Mesa Chamber of Commerce (MCC), introduced Sally Harrison, President of the MCC. He stated that MCC submitted guiding principles to the Committee that could be helpful from the perspective of what is good for economic development, business retention, and the citizens of Mesa. He noted that he met with the City Manager, utility companies and other stakeholders as it relates to the proposed ordinance changes, and five guiding principles were developed from those discussions. He stated that the City must first define a public utility easement to avoid potential litigation; protect City streets; that the current moratorium on cuts is problematic to economic development; give utility partners options for street cuts with an appropriate fee; and to incorporate Mayor Giles' economic development vision of connectivity options. He added that the ordinance, as it is drafted, gives an atmosphere of divisiveness and Council has the ability to bring people together that benefits both the utility partners and the citizens of the community.

In response to a question from Committeemember Richins, Mr. Emmert stated that Proposition 207, which passed in 2006, may apply in this circumstance, but noted that his concern is that it could be litigated depending on how a PUE is or is not defined.

Steve Priebe, a Mesa resident, spoke in favor of the proposed ordinance and stated his support for the City to retain its right to oversee easements. He presented the Committee with pictures that displayed cable lines that are running along the ground and through his yard. He reported that for the past nine years, the power lines have been cluttered with exposed wires 20 feet above the ground and that the wires have been covered with black plastic, which becomes weathered and drops debris on the yard. He stated that he contacted Century Link multiple times on this issue and received no resolution until the City was contacted.

Michael Stull of Cox Communications stated that he has been working with staff on the proposed ordinance and spoke against the street cuts being limited and restricted. He stated the change could impose problems to the utility industry to forecast economic development activity in service areas. He added that continued denial of requests to cut pavement will affect the services public utilities can offer residents. He also expressed opposition to potholing costs potentially being passed on to the utility companies, which could increase costs to customers.

In response to a question from Committeemember Richins, Mr. Stull explained the current process of obtaining a new request order and the various obstacles in fulfilling the request that at times delays service delivery to the customers.

Committeemember Finter asked if potholing is a generally accepted practice throughout the valley and with utility companies, and if the City would be outside the norm in asking for reimbursement.

Mr. Stull responded that normally the requesting party performing the maintenance within the ROW bears the expense (i.e., City, Utility Company, etc.).

In response to a question from Committeemember Finter, Mr. Stull stated that he is in general agreement with the changes but wants to ensure that the timeframe is adhered to for quick and proper service to the customers.

In response to a question from Chairman Thompson, Mr. Stull requested that adjacent property owners be included in the planning process for street redevelopment to determine if there are any future plans to develop the property.

Eric Mahaffey, a Mesa resident, spoke in favor of the proposed changes and addressed the Committee on numerous complaints given to Century Link and Cox Communications regarding loose utility wires on his property and in the alley. He reported an injury caused by the wires and spoke in favor of enforcing code violations to protect the welfare of citizens.

Jeff Mirasola and Roni Jean Grant-Sloan, both with Century Link, addressed customer service response time and stated that the proposed two-year moratorium will be problematic. He noted that it is more economical for the industry to cut the street rather than doing a build around, and that other cities allow them to cut a street that is less than two years old but with additional penalties.

Ms. Grant-Sloan added that Century Link does not pay for potholing for a city project when staff relocates Century Link facilities.

Discussion ensued relative to the interpretation of a PUE and the requirements for issuing permits.

Mr. Smith reiterated that the appeal process in the proposed ordinance would allow for disagreements to be managed within the required timeframe. He also noted that the potholing language is the same as that in other valley cities.

Stephanie Navarro with Salt River Project (SRP) introduced Monica Michelizzi, SRP Attorney and Chris Reynoso, Director of Distribution Improvements, who were present to assist with the presentation.

Ms. Navarro stated that SRP's main concern is the PUE language in the proposed ordinance and provided historical data that led utility companies to agree to group all of their facilities in one single area known as a PUE.

Ms. Navarro stated that original PUEs were dedicated by developers for purposes of public utilities until 1997 when the City of Mesa started requiring PUEs to be dedicated by plat to the City instead of the dedication to public utilities. She stated that this raised some concerns at the time but because the City was still required to pay relocation costs under the City ordinance it

was not a big issue. She added that afterwards the City started increasing the uses of the PUEs by putting other items in that were typically ROW items (i.e., sidewalks, bus stops), which increased the uses in the PUE and contradicts the original purpose of the PUE, which is to provide an easement for public utilities.

Ms. Navarro indicated that if the ordinance is passed, the utilities will be unable to use the PUEs. She added that they have discussed requiring easements for the protection of their facilities, but don't believe that is the type of development the City is looking for. She pointed out that other cities do not require PUEs to be dedicated to the municipality but rather to the public for the purpose of public utilities. She requested that the Committee reconsider the adoption of the ordinance.

Ms. McNear responded that there is a difference in interpretation on this issue and advised that attorneys for Gilbert, Tempe, Chandler, Phoenix, Glendale and Peoria stated that the interpretation of a PUE is the functional equivalent of the interpretation of a ROW and that certain cities require a utility, including SRP, to pay for relocations out of a PUE.

Ms. McNear explained that in the City of Mesa, staff determines whether a utility company is in our easement by permit, which means the City has prior rights.

Ms. Michelizzi responded by saying that SRP policy states that when service is provided, customers must provide easements to protect SRP facilities. She stated that there may be some exceptions, but SRP does not get permits when they construct in a PUE, and that Cities pay their relocation expenses when they ask SRP to move out of the PUEs.

Ms. Michelizzi indicated that what they are hearing is that the City's goal is that a PUE is the same as a ROW. She further stated that under SRP policy, ROW does not meet the requirement of an easement and that if the City is going to convert PUEs to ROW, then SRP will not be able to provide service to customers unless they provide SRP with an easement.

Committeemember Richins commented that there is not enough room in the ROW due to the increased densities and setback encroachments of the streets. He added that everyone will need to work together in the ROW.

Ms. Michelizzi stated this is an important issue to SRP because it could cost millions to relocate underground facilities.

Committeemember Richins stated that the City is forcing its own utility underground as security and aesthetics are important in a competitive City environment. He acknowledged that the process might take awhile, but the City can absorb the cost in rate and tax bases.

Committeemember Finter concurred and suggested moving all of the agreeable portions of the ordinance forward and further discuss the public easement definition and the PUE relocation responsibilities.

In response to a question from Committeemember Richins, Ms. McNear stated that alternative language and definitions were requested, but that neither SRP or any other public utility provided options.

Ms. Michelizzi explained that SRP does not have an issue with the language, but with whether the City or the utility companies own and control the PUE.

Chairman Thompson commented that he would like this item to move forward with the understanding that the PUE definition should first be resolved before moving on to the full Council.

Committeemember Richins responded to Ms. Navarro's question as to why there is a need to change the ordinance and noted that it is due to the change of development standards and that the ordinance needs to work within the new development rubric.

Ms. Michelizzi stated that the current provision requires the City to pay for relocations out of the PUE and the proposed draft will not pay for the relocations and that's the fundamental issue.

Mr. Smith stated that the current language cannot be found in any other city, which obligates the City for something that the common law does not.

Ms. Michelizzi stated that historically SRP has not had the discussion with City staff as to who owns the PUE because the City code states that the City would pay for relocations.

In response to a question from Committeemember Richins, Ms. Michelizzi stated that it has been SRP's experience that other cities pay for relocations out of a PUE.

Mr. Smith stated that based on staff's research, other cities require public utilities to pay for relocations unless they have a prior right.

Further discussion ensued regarding prior right disposition and PUE relocation costs.

In response to a series of questions from the Committee, Ms. Kent suggested that staff continue working on the section related to pavement preservation so that there is a cost recovery process in place.

Chairman Thompson suggested moving the changes forward to Council with the exception of the PUE. He stated that he is satisfied with how the process lowers the cutting threshold from five-years to two-years and accommodates the public utilities and provides for an appeals process.

It was moved by Committeemember Richins, seconded by Committeemember Finter, to direct staff to conduct additional research relative to the Pavement Preservation and Right-of-Way City Code Modifications relative to 9-1-5 (d) of the Mesa City Code and that such information be forwarded on to the full Council for further discussion and consideration.

Carried unanimously.

Chairman Thompson thanked everyone for their presentations.



3. Adjournment.

Without objection, the Sustainability and Transportation Committee Meeting adjourned at 11:04 a.m.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Sustainability & Transportation Committee meeting of the City of Mesa, Arizona, held on the 19<sup>th</sup> day of March, 2015. I further certify that the meeting was duly called and held and that a quorum was present.

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DEE ANN MICKELSEN, CITY CLERK

abg  
(Attachments – 2)

# ELECTRIC LIGHTWAVE, LLC

MARCH 19, 2015

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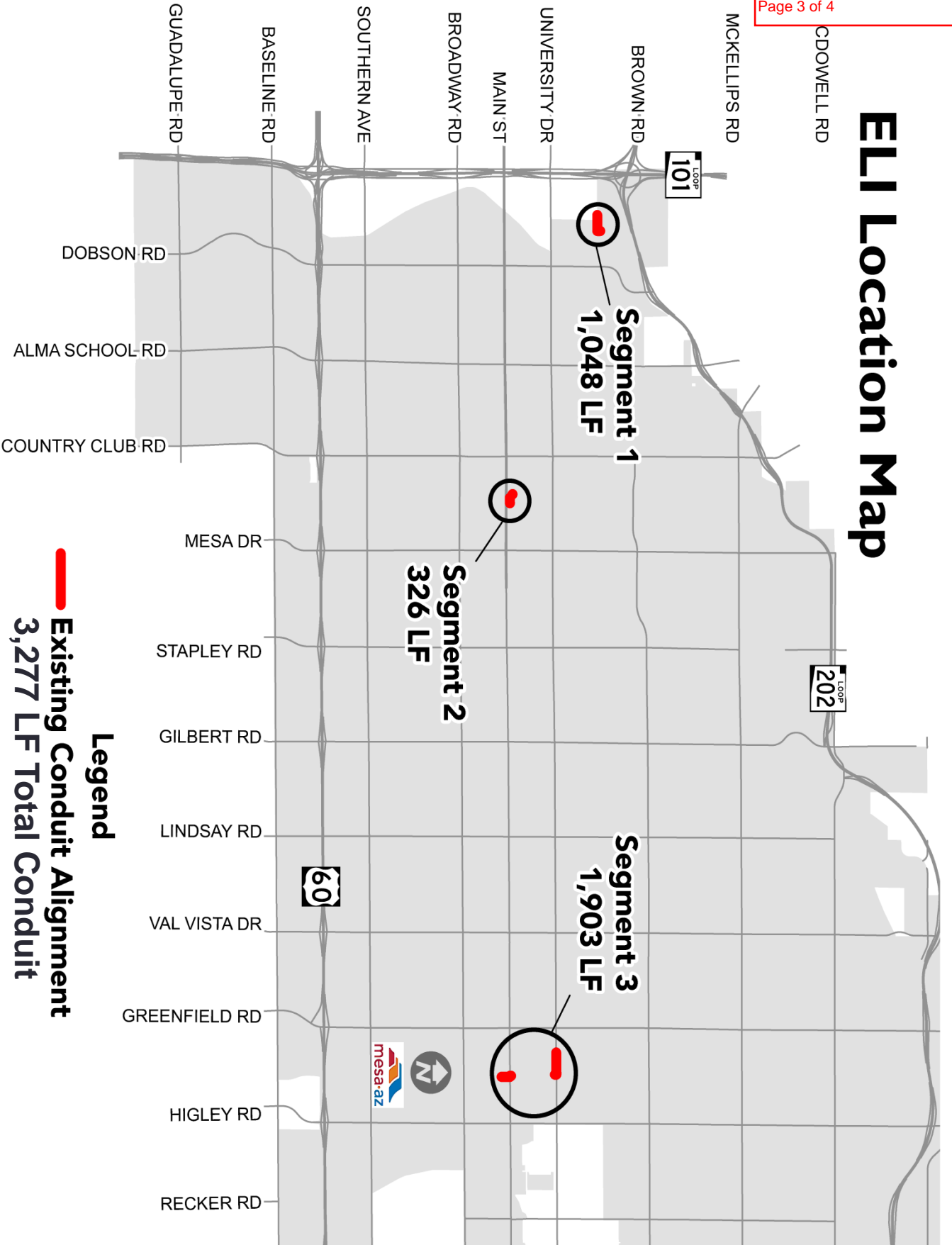
# ELECTRIC LIGHTWAVE Telecommunication License

- Request to install a communication network in City's rights-of-way & public utility easements
- Five year term with the option of a five year extension

## ELI will provide the City:

- One working pair of fibers in each new excavation, up to an amount not to exceed \$5,000.00 in the aggregate
- Transaction privileged tax
- Required permitting fees

# ELI Location Map



# Questions?

# MESA CITY CODE TITLE 9 PUBLIC WAYS & PROPERTY PROPOSED MODIFICATIONS TO CHAPTER 1

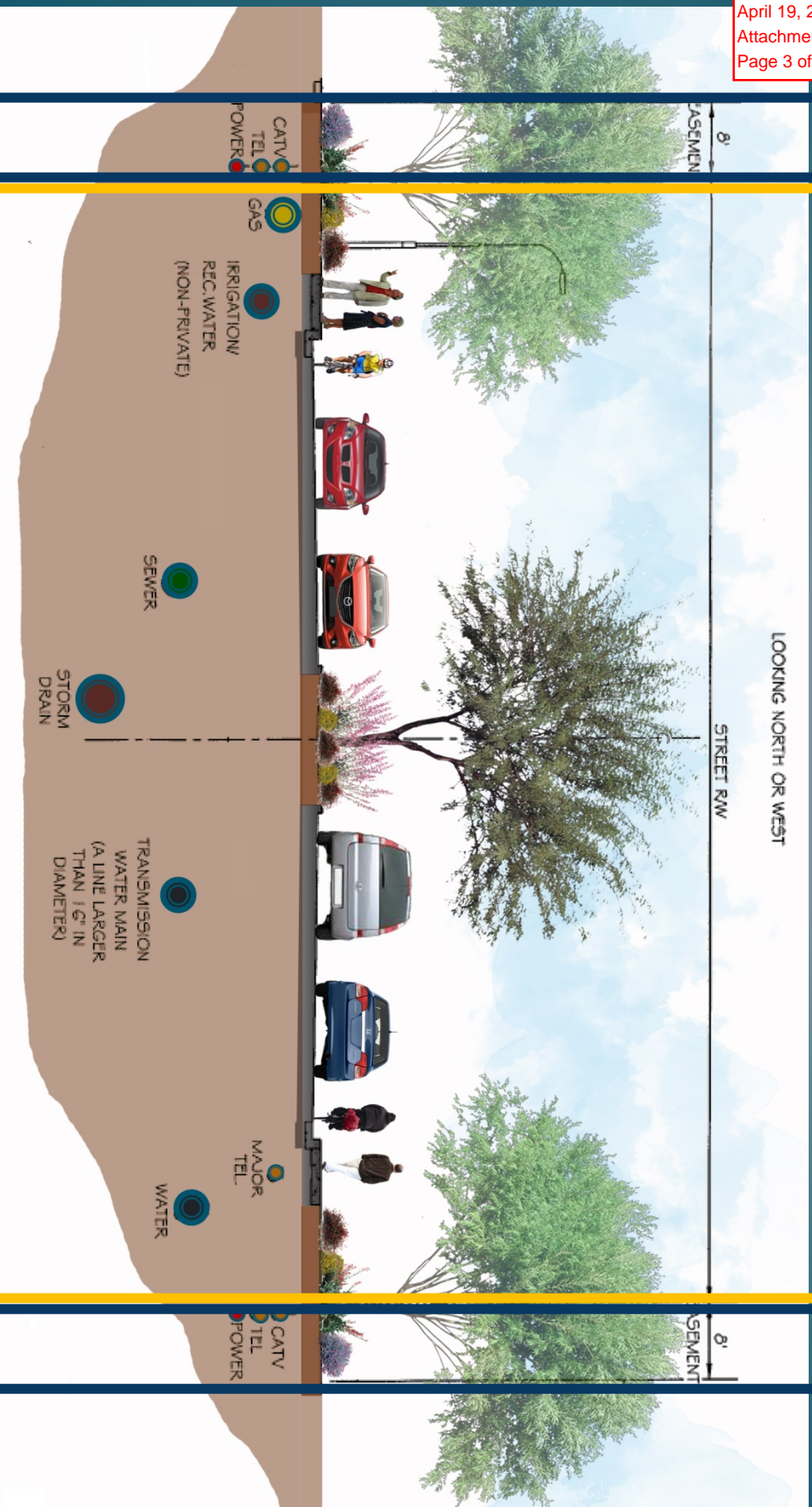
ENGINEERING / TRANSPORTATION DEPARTMENTS  
MARCH 19, 2015

# TERMS ...

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

# STANDARD STREET CROSS SECTION

# RIGHT-OF-WAY



PUF-

PU-  
PUFE



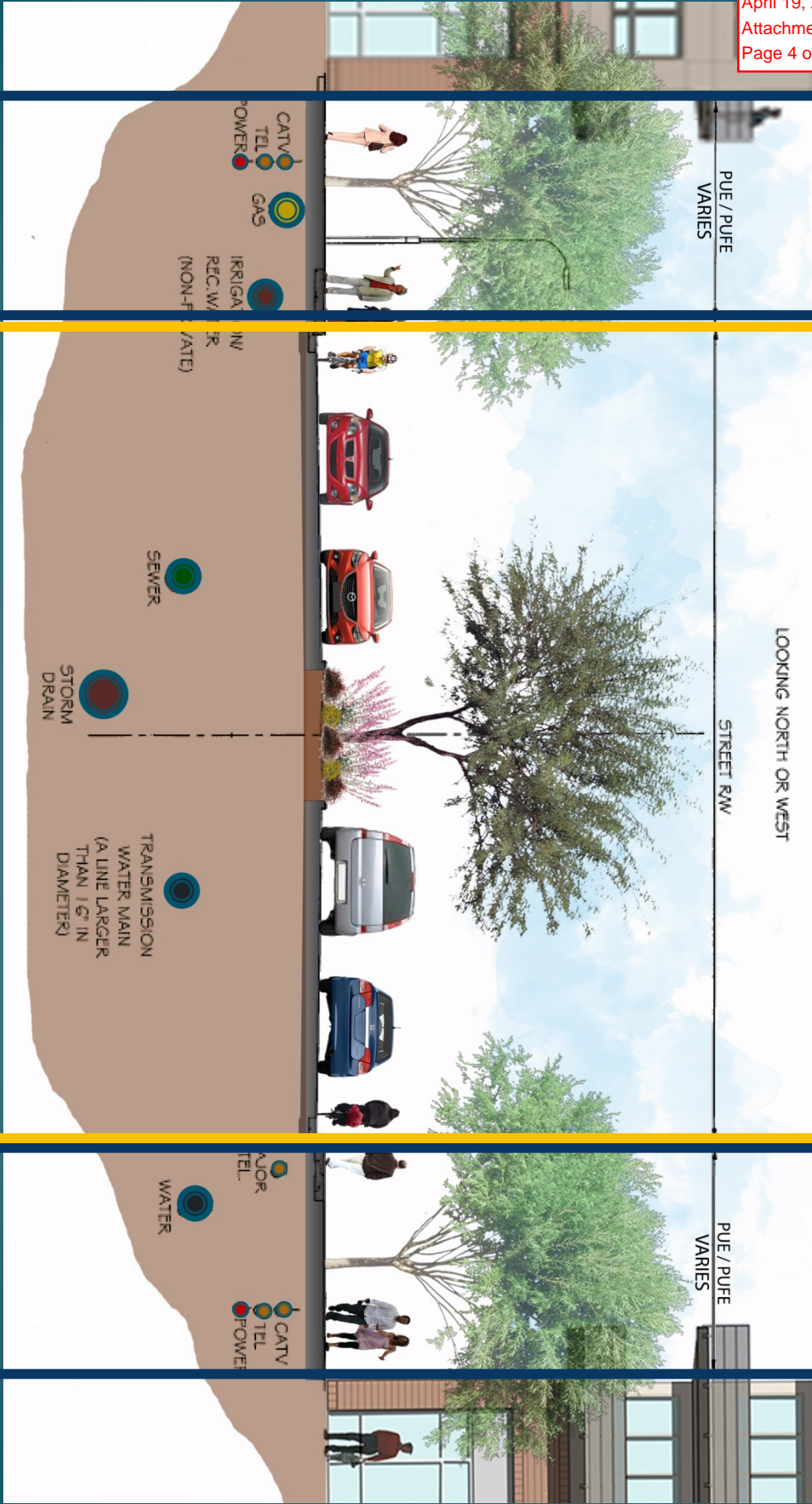
# ORM-BASED CODE STREET CROSS SECTION

## RIGHT-OF-WAY

LOOKING NORTH OR WEST

STREET R/W

PUE / PUE  
VARIES



CATV  
TEL  
POWER  
GAS  
IRRIGATION  
REC.WATER  
(NON-FERTILIZER)

SEWER

STORM  
DRAIN

TRANSMISSION  
WATER MAIN  
(A LINE LARGER  
THAN 16" IN  
DIAMETER)

CATV  
TEL  
POWER  
WATER

PUE / PUE  
VARIES

PUE-  
PUE

PUE-  
PUE

# WHO IS IN MESA ROW & PUE / PUFEE?

(pavement, curb, storm drain, street lights, sidewalks, bus, paths, pedestrian 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

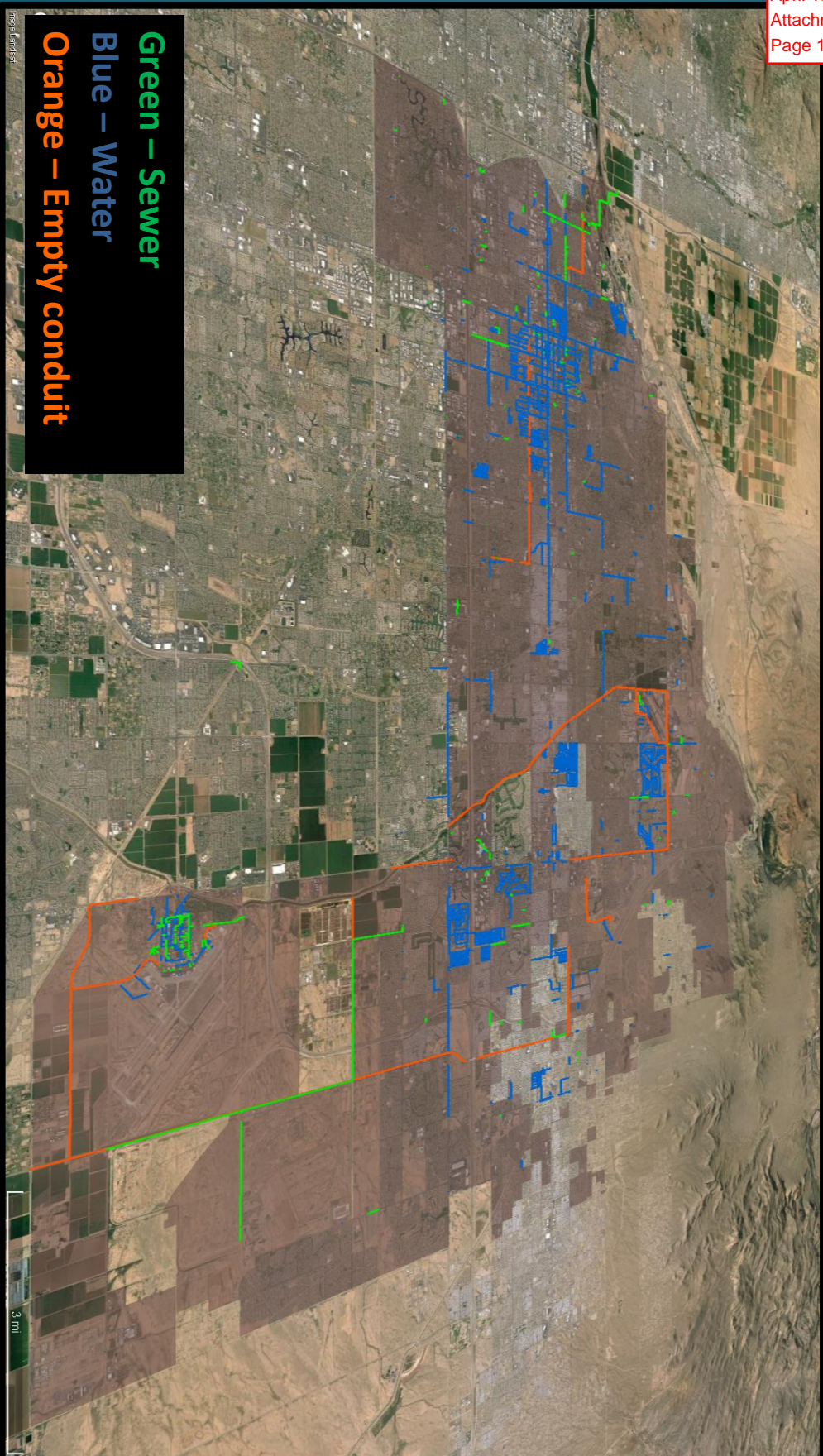


# OUTREACH & PREVENTION....

## 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



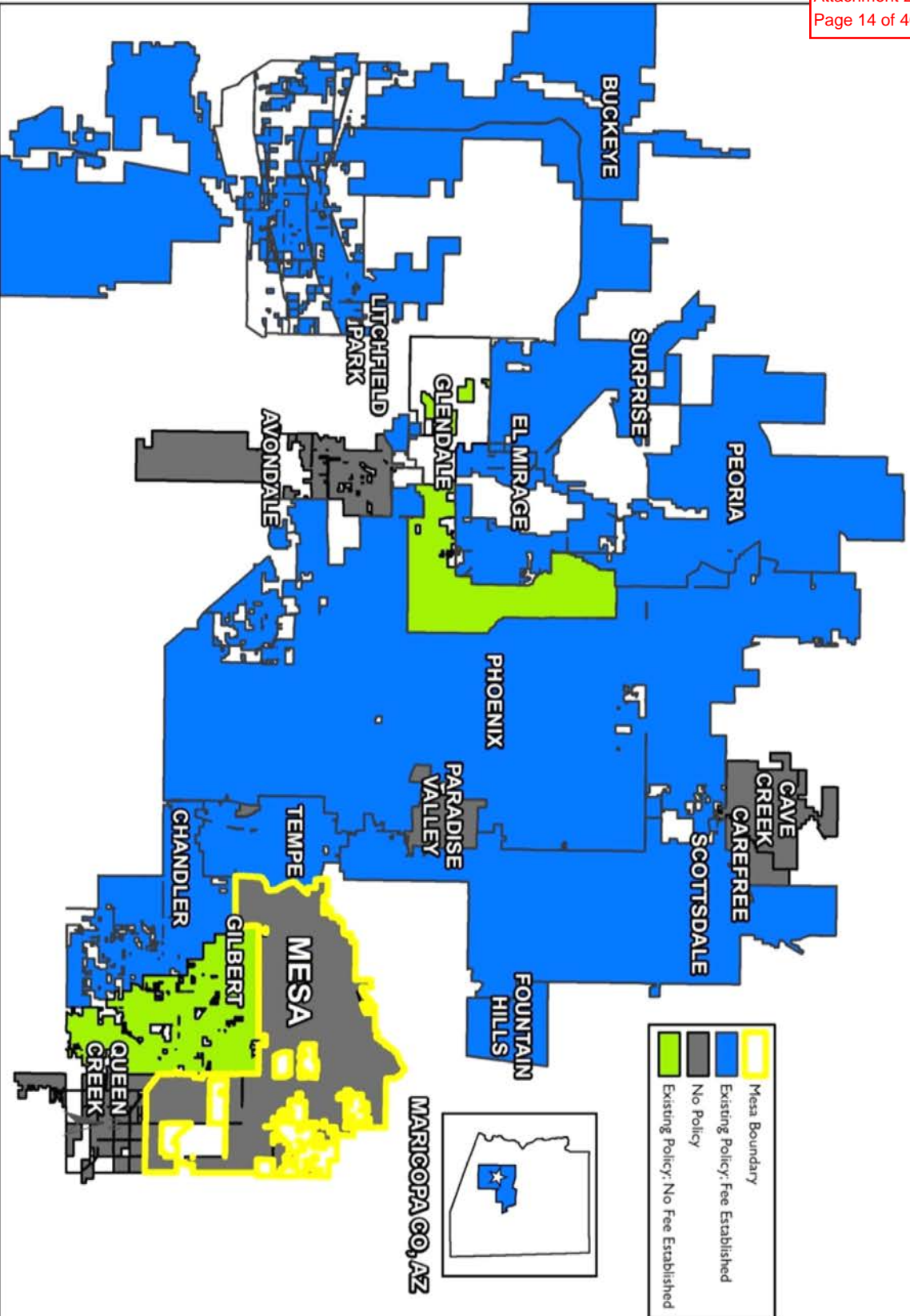
# STUDIED BEST PRACTICES OF OTHER CITIES WITH COMPARABLE UTILITY PARTNERS:

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

# PDATED VALLEY CITIES BEST PRACTICES ....

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

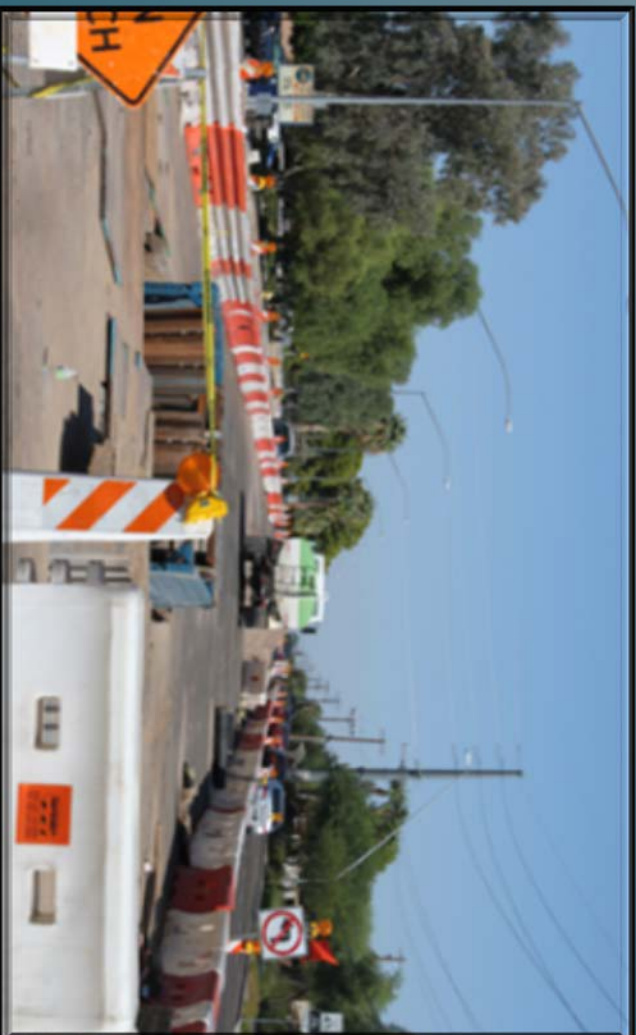
PAVEMENT CUTS REDUCE PAVEMENT LIFE BETWEEN  
15% TO 23%

- 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,

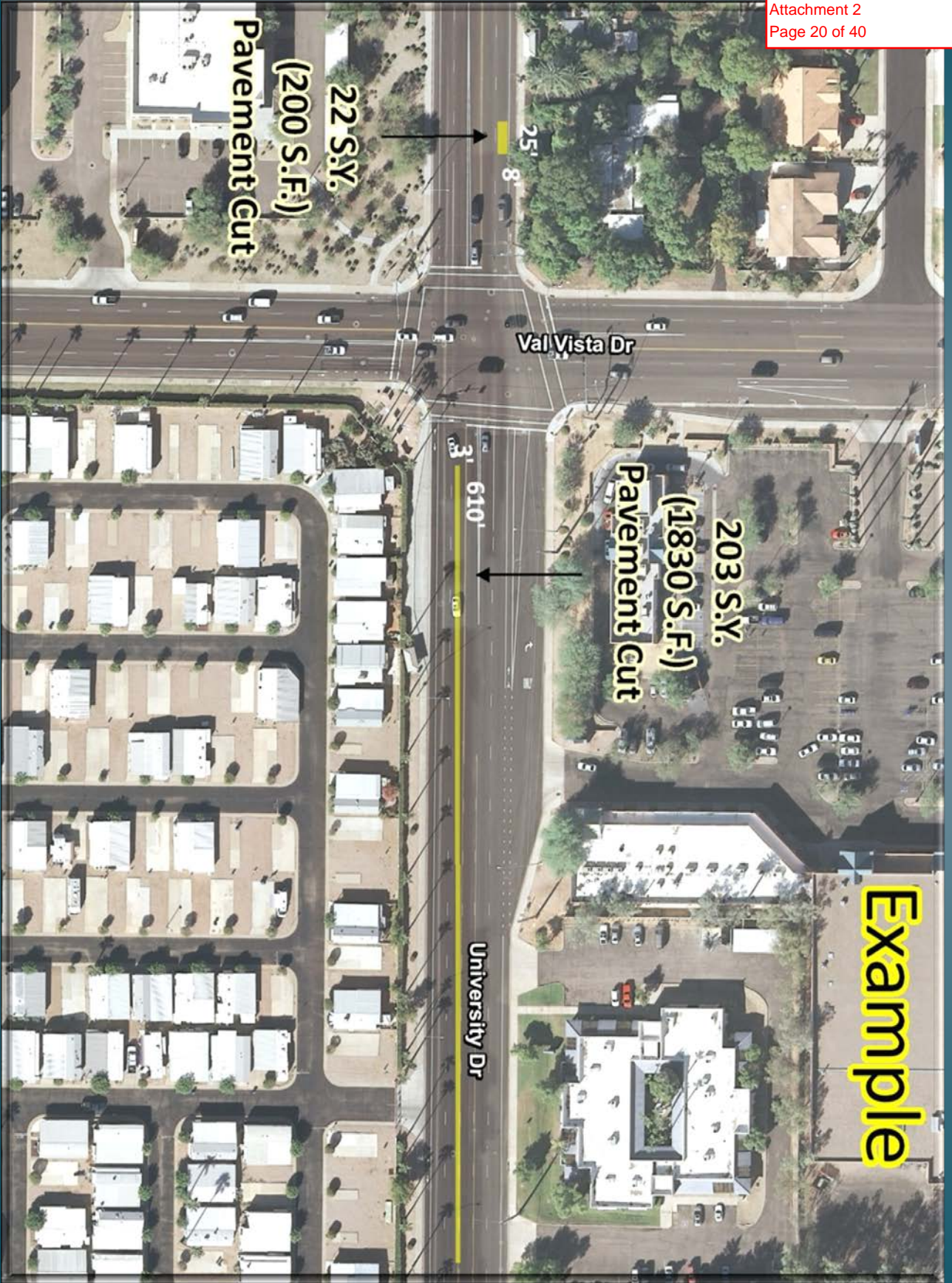
ESSENTIAL SERVICES, AND NEW SERVICES

- 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

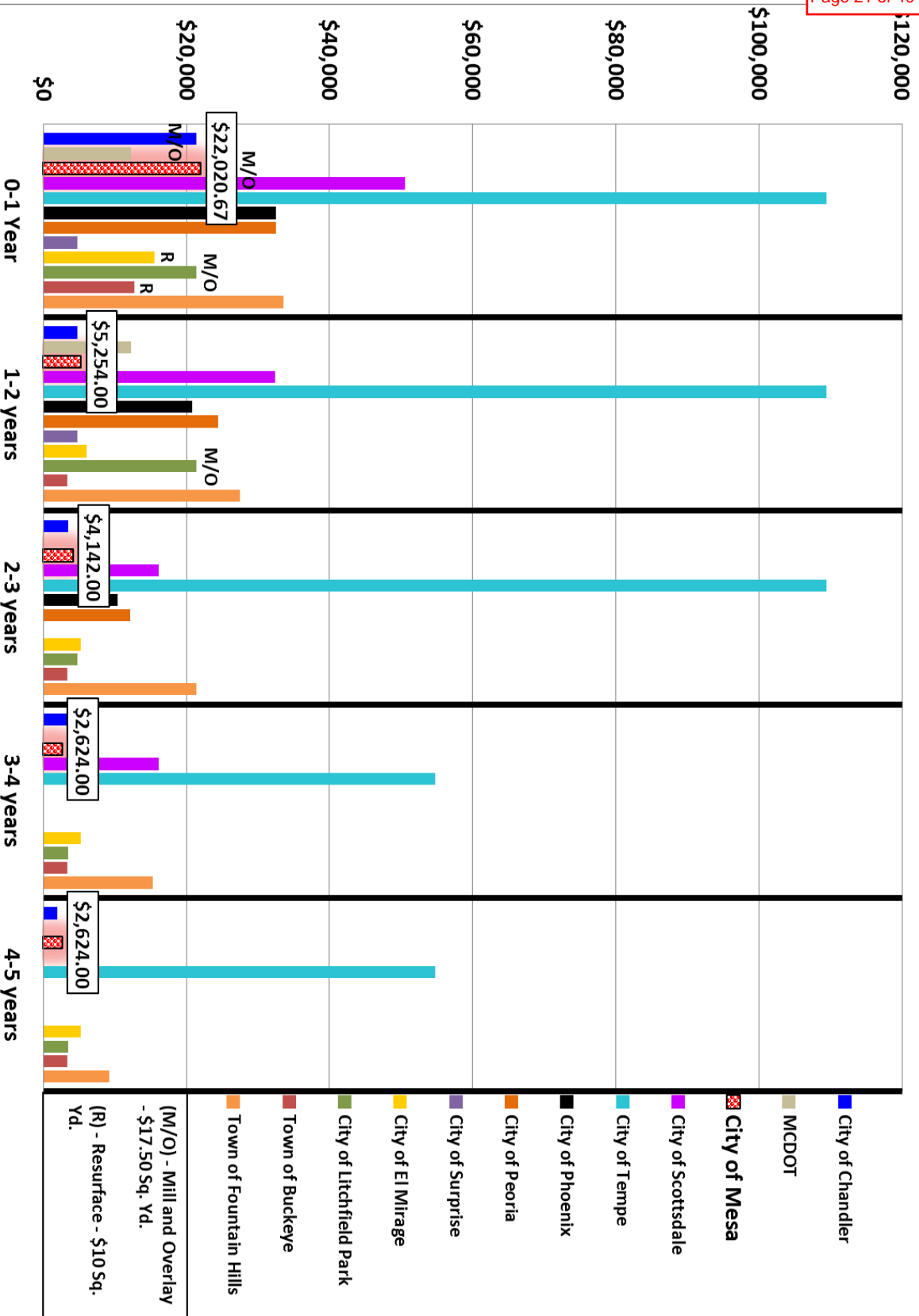
# CURRENTLY PROPOSED PAVEMENT RESTORATION FEES

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

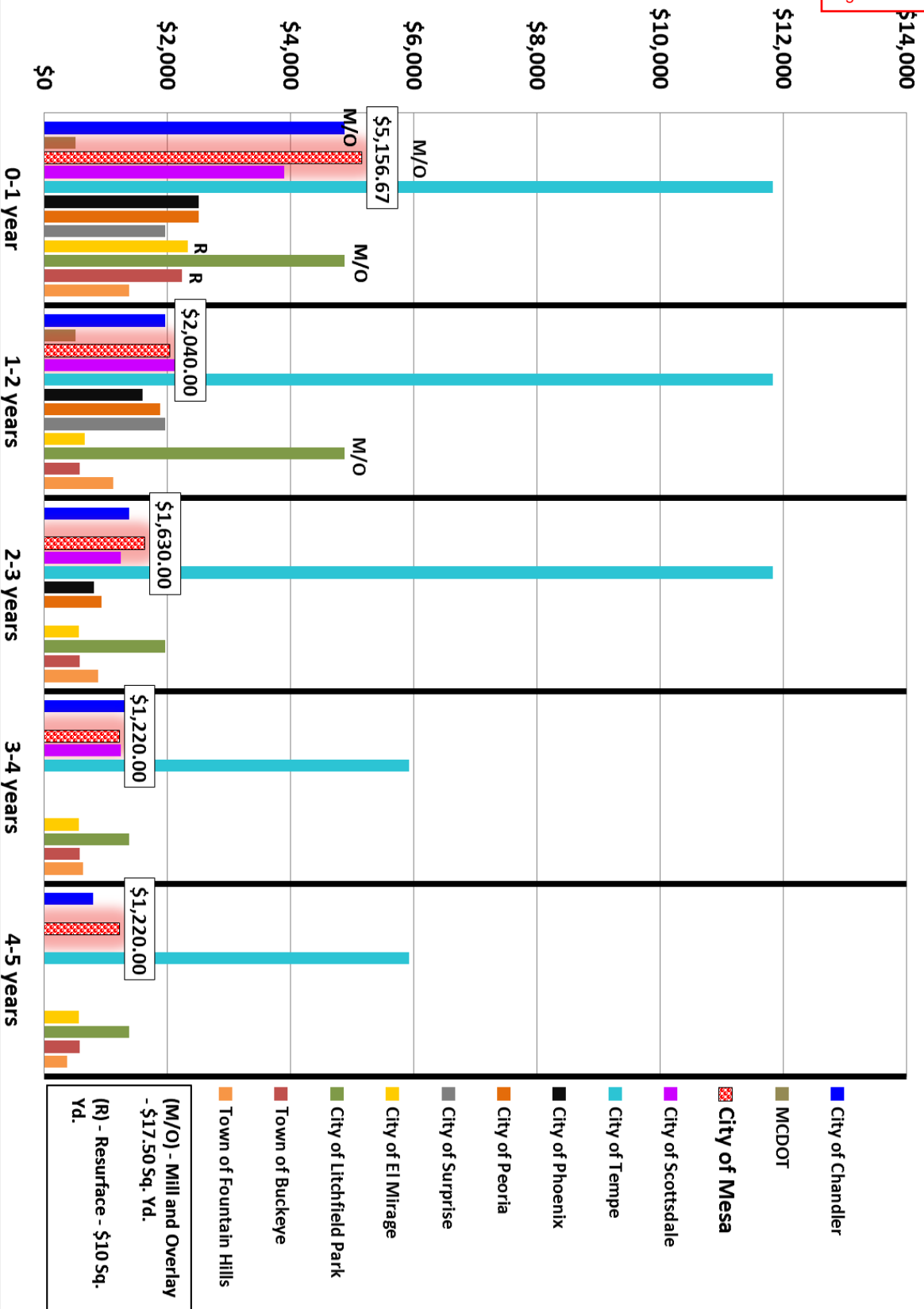




## Pavement Restoration Fee Example for 203 square yards



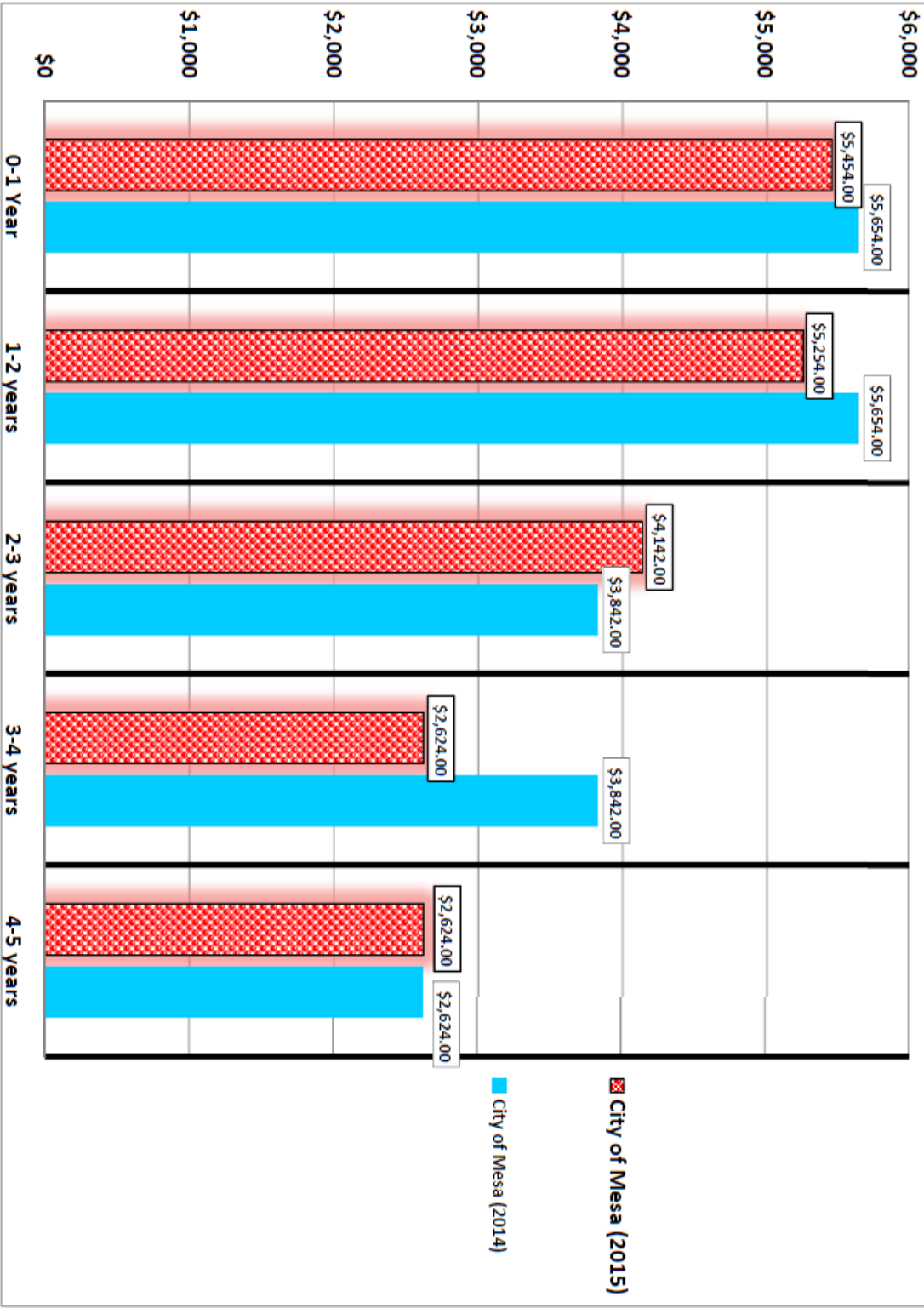
### Pavement Restoration Fee Example for 22 square yards





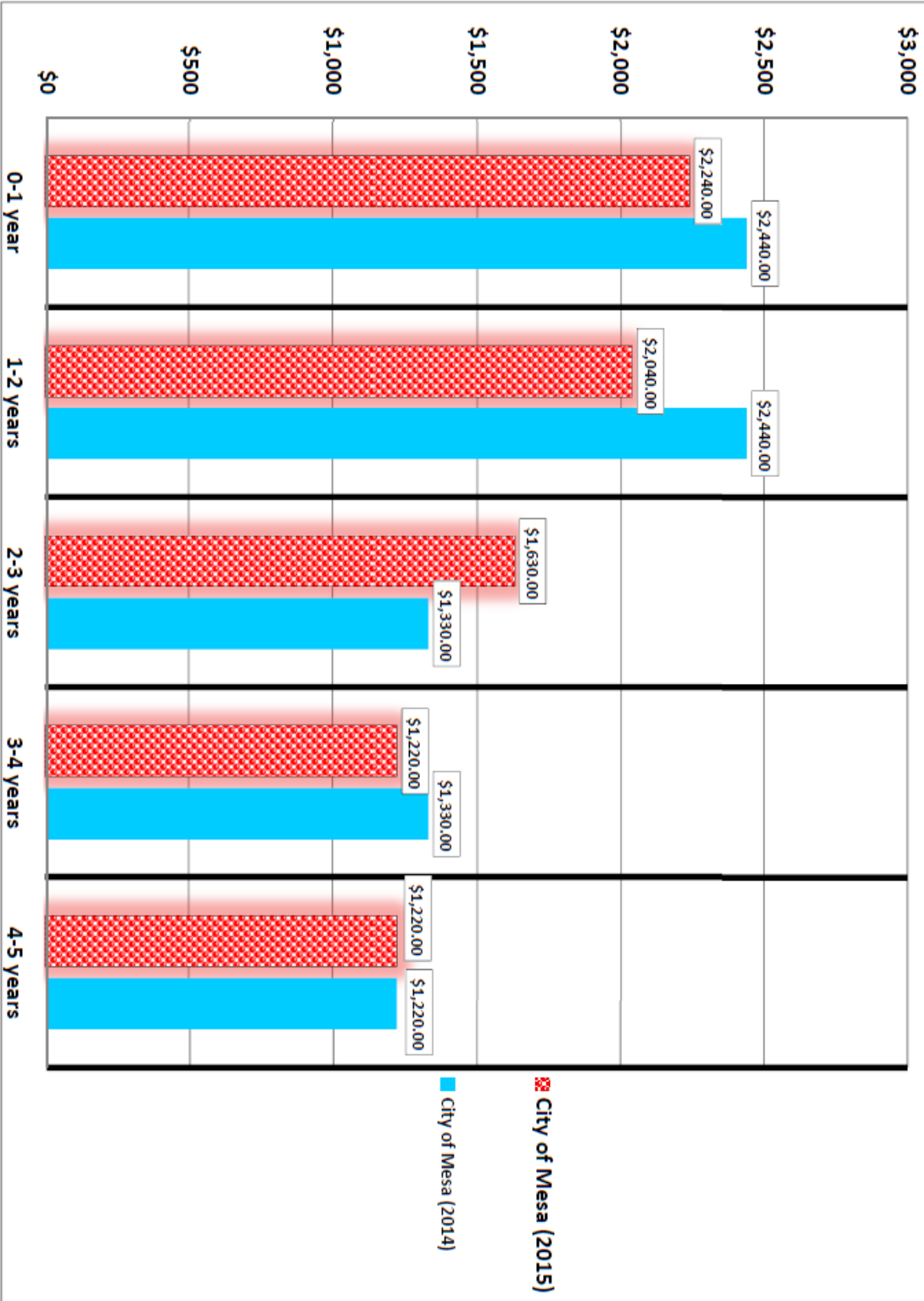
# RATE COMPARISON

Pavement Restoration Fee Example for 203 square yards



# RATE COMPARISON

Pavement Restoration Fee Example for 22 square yards



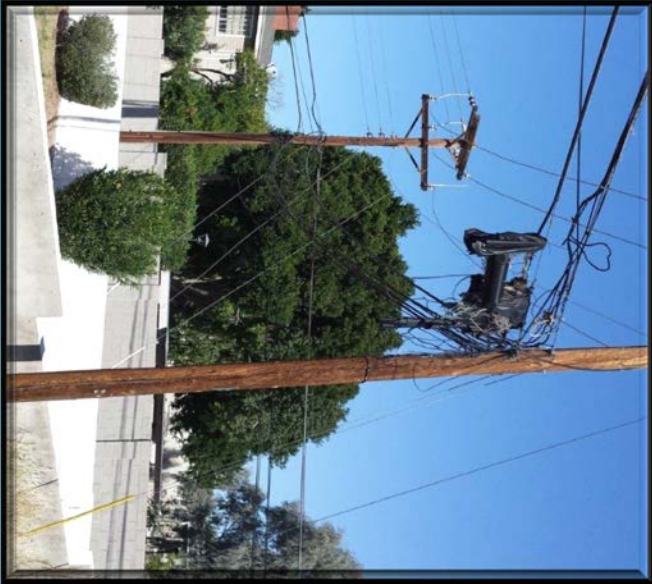
# RIGHT-OF-WAY/PUBLIC EASEMENT OVERSIGHT

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

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





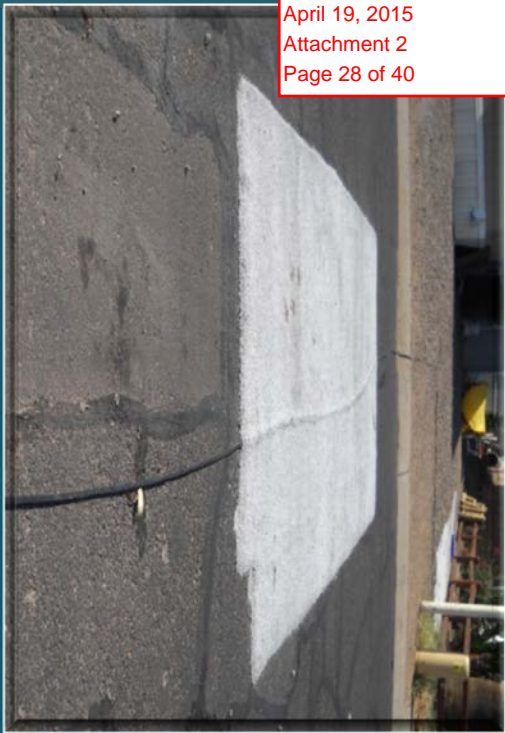


**CONCERN: LOW HANGING WIRES, NEC SAYS 15.5' MINIMUM**

**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/PUE SHALL CONFORM TO  
CITY STANDARDS
- ROW/PUE/PUE USERS SHALL MAINTAIN ACCURATE  
RECORD DRAWINGS
- ROW/PUE/PUE 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

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 POT HOLE 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

**CC 46-2.6(F):** Any encroachment including but not limited to pipes, wire, cable, appurtenances or other structures or facilities installed or placed in, on or under any public place, right-of-way or other public structure 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 a public purpose, public utility or city project.

**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.

**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.**

**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...

**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.**

**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.

**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.**

**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

4.11: When the Licenser 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 Licenser directs. . . . (the definition of “Public Streets” includes public easement.)

## 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.

## 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 . . .

## 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)

## 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

## Law Concerning Utilities' Relocation Costs

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

andler 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