

RESOLUTION NO. 26-18

RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF BUCKEYE, MARICOPA COUNTY, ARIZONA, CONFIRMING REVISED FINAL PLANS AND SPECIFICATIONS AND AWARDING THE CONSTRUCTION CONTRACT FOR THE WORK DESCRIBED IN RESOLUTION NO. 14-17 WITH RESPECT TO CITY OF BUCKEYE, ARIZONA, ROOSEVELT STREET IMPROVEMENT DISTRICT, AND APPROVING THE ASSESSMENT DISTRICT MAP, LEGAL DESCRIPTION, ASSESSMENT DIAGRAM, ASSESSMENTS AND THE METHOD OF ASSESSMENT FOR SUCH IMPROVEMENT DISTRICT; AND RATIFYING RELATED ACTIONS AND AGREEMENTS, INCLUDING AN AMENDMENT TO THE WAIVER AND DEVELOPMENT AGREEMENT PERTAINING TO THE IMPROVEMENT DISTRICT.

WHEREAS, on April 4, 2017, the Mayor and City Council of the City of Buckeye, Arizona, passed and adopted Resolution No. 14-17 (the "*Resolution of Intention*"), which Resolution of Intention established the following: declared the intention of the Governing Body (as defined in the Resolution of Intention) to make the improvements described in the Plans and Specifications on file with the Clerk (the "*Work*"); the costs and expenses of such Work to be known as "*City of Buckeye, Arizona, Roosevelt Street Improvement District*" (the "*District*"); determined that improvement bonds shall be issued to represent the costs and expenses thereof; declared the Work to be of more than local or ordinary public benefit, and that the costs and expenses thereof shall be assessed upon the parcels and lots within the District; provided that the proposed Work shall be performed under the provisions of Title 48, Chapter 4, Article 2, Arizona Revised Statutes, and all amendments thereto; and such Work, the District to be assessed and the improvement bonds to be issued were more fully described in the Resolution of Intention to which reference is hereby made for such description; and

WHEREAS, the approving of the final Plans and Specifications and the furnishing of all labor, materials, transportation, services and equipment for the Work as defined in the Resolution was ordered in accordance with Resolution No. 15-17 (the "*Resolution Ordering the Work*"), passed and adopted by the Mayor and City Council of the City of Buckeye, Arizona, on April 4, 2017; and

WHEREAS, subsequent to adoption of the Resolution of Intention and the Resolution Ordering the Work, the District Engineer reduced the scope of the Work and revised the boundaries of the District as described further in this resolution; and

WHEREAS, at the time of adoption of the Resolution of Intention and Resolution Ordering the Work, the final Plans and Specifications, as thereafter modified to reflect the reduced scope of Work, that showed the location and type and character of the Work and the District Engineer's Estimate of the cost and expenses thereof were prepared and filed with the Clerk of the City of Buckeye, Arizona (the "*City*"); and

WHEREAS, sealed proposals were received pursuant to an "Invitation for Bid IFB 2018-003 Roosevelt Street Improvement District" (the "*Notice*"), which was duly published and posted as provided by law, for the Work; and

WHEREAS, the proposal of Sunland Asphalt and Construction (the "*Contractor*") has been determined to be the lowest and best bid of a responsible bidder for the kind of material and specifications set forth in the final Plans and Specifications at the unit prices named for the Work in such proposal on file in the Office of the Clerk, and such proposal in all respects complies with the terms of the Notice; and

WHEREAS, the District Engineer has prepared and presented to the Mayor and City Council of the City (1) duplicate diagrams of the property contained within the District (the "*Assessment Diagram*") which is attached hereto as Exhibit A, and (2) a written report on the method of assessment to be applied with respect to the Assessment Diagram and the assessment of the benefit to be received by the Work in the form on file with the Clerk, and with an excerpt attached hereto as Exhibit B (the "*Assessment Methodology Excerpt*"); and

WHEREAS, in connection with the revision to the Assessment District boundaries, the District Engineer prepared a revised Assessment District Map, which is attached hereto as Exhibit C, and a revised legal description of the boundaries of the Assessment District, which is attached hereto as Exhibit D; and

WHEREAS, all property owners in the Assessment District and any other persons having an interest in the property within the Assessment District previously executed and delivered the Waiver (as defined in the Resolution of Intention), waiving, among other things, all requirements for notice and time for protests against the Work and objections to the extent of the Assessment District; and

WHEREAS, in connection with the revision of the boundaries of the Assessment District and the scope of the Work, all property owners in the Assessment District executed and delivered the First Amendment to Waiver and Development Agreement for City of Buckeye, Arizona Roosevelt Street Improvement District (the "*Waiver First Amendment*");

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BUCKEYE, MARICOPA COUNTY, ARIZONA, as follows:

Section 1. Definitions. Capitalized terms used herein and not otherwise defined have the meanings ascribed in the Resolution of Intention.

Section 2. Findings. The final Plans and Specifications reflecting the reduced scope of the Work on file with the Clerk are approved. The revisions to the Assessment District Map and the legal description of the boundaries of the Assessment District, as depicted in Exhibit C and Exhibit D attached hereto, respectively, are approved.

Section 3. Construction Award and Terms. The proposal of the Contractor for furnishing of all labor, material, transportation, services and equipment for the Work is hereby accepted, and a construction contract for the Work (the "*Construction Contract*") shall be awarded to the Contractor. In accordance with the terms of the proposal submitted by the Contractor, the Construction Contract shall be in the amount of \$5,120,113.00. All actions and proceedings heretofore and hereafter taken relating to the District and the awarding of the Construction Contract to the Contractor are hereby ratified and affirmed. The City Manager is hereby authorized and directed to execute and deliver the Construction Contract for an on behalf of the City.

Section 4. Notice of Construction Award. The City's Construction and Contracts Manager is hereby authorized and directed to prepare and execute the "Notice of Award of Construction Contract for the Construction of the Work for City of Buckeye, Arizona Roosevelt Street Improvement District" in substantially the form attached hereto as Exhibit E and to cause such notice to be posted and published as provided by law.

Section 5. Approval of Assessment Diagram, Assessments and Assessment Methodology. The Assessment Diagram, attached hereto as Exhibit A, as prepared and on file with the Clerk, and the

written report describing the method of assessment on file with the Clerk and with an excerpt provided in the Assessment Methodology Excerpt, attached hereto as Exhibit B, including the amount of the assessments as indicated thereon, are hereby approved. The Clerk is hereby authorized and directed to certify that the Assessment Diagram was approved by the Mayor and City Council of the City on the date of this resolution, and after such certification, the Clerk is hereby authorized and directed to deliver the Assessment Diagram to the Superintendent of Streets.

Section 6. Approval of First Amendment to Waiver and Development Agreement. All of the owners of land within the Assessment District and all other persons having an interest in such land have executed and delivered the Waiver First Amendment in order to incorporate, without limitation, the revised Assessment District Map and revised legal description of the Assessment District boundaries. The Mayor, any member of the City Council if the Mayor is not available, or the City Manager is each hereby authorized and directed to execute the Waiver First Amendment on behalf of the City, and the Clerk is authorized to attest, as applicable, and further the Clerk is authorized to record the Waiver First Amendment with the Maricopa County Recorder. If such acts have occurred prior to the consideration of this resolution, such acts are ratified and confirmed.

Section 7. Repeal of Conflicting Resolutions. Any resolutions or parts of resolutions in conflict with the provisions of this resolution are hereby repealed.

PASSED, ADOPTED AND APPROVED by the Mayor and City Council of the City of Buckeye, Maricopa County, Arizona, on April 17, 2018.

Jackie A. Meck, Mayor

ATTEST:

Lucinda J. Aja, City Clerk

APPROVED:

Gust Rosenfeld P.L.C.
Bond Counsel

CERTIFICATION

I, Lucinda Aja, the duly appointed and acting City Clerk of the City of Buckeye, Arizona, do hereby certify that the above and foregoing Resolution No. 26-18 was duly passed by the Mayor and City Council of the City of Buckeye, Arizona, at a regular meeting held on April 17, 2018, and the vote was ____ aye's and ____ nay's and that the Mayor and ____ Council Members were present thereat.

DATED: April 17, 2018.

Lucinda J. Aja, City Clerk

EXHIBIT A

ASSESSMENT DIAGRAM

(SEE ATTACHMENT)

EXHIBIT B

ASSESSMENT METHODOLOGY EXCERPT

(SEE ATTACHMENT)

EXHIBIT C

ASSESSMENT DISTRICT MAP (REVISED)

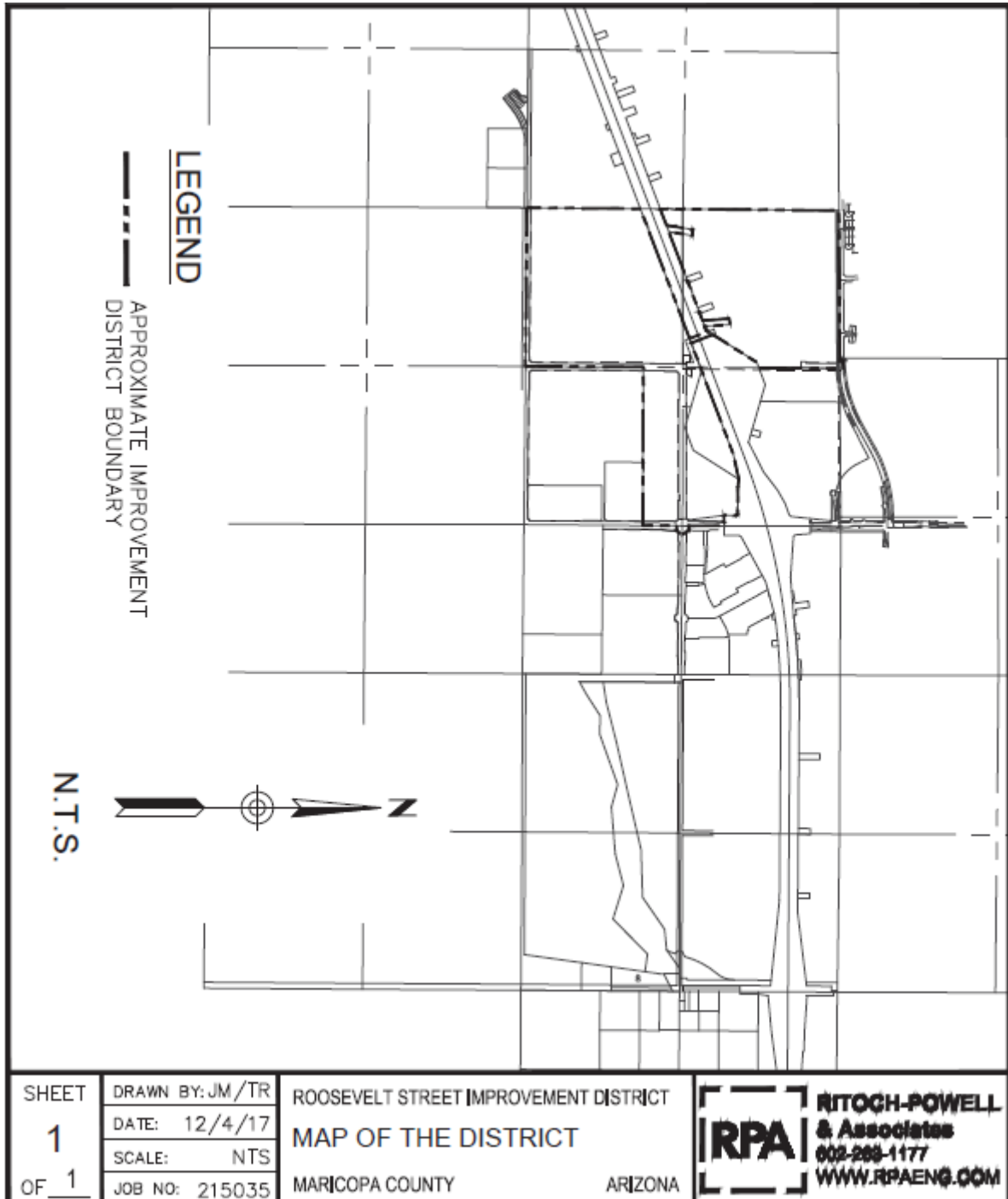


EXHIBIT D

LEGAL DESCRIPTION OF ASSESSMENT DISTRICT BOUNDARIES (REVISED)

A PARCEL OF LAND BEING A PORTION OF SECTION 1, TOWNSHIP 1 NORTH, RANGE 3 WEST, AS WELL AS, A PORTION OF SECTIONS 5 & 6, TOWNSHIP 1 NORTH, RANGE 2 WEST OF THE GILA & SALT RIVER MERIDIAN, CITY OF BUCKEYE, MARICOPA COUNTY, ARIZONA AND BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SECTION 1
FROM WHICH POINT THE EAST QUARTER CORNER THEREOF BEARS S89°56'54"E A
DISTANCE OF 2645.17 FEET;

THENCE S00°26'27"W, ALONG THE WEST LINE OF THE SOUTHEAST CORNER OF SAID
SECTION 1, A DISTANCE OF 655.41 FEET TO THE POINT OF BEGINNING;

THENCE S00°26'27"W A DISTANCE OF 1966.22 FEET;

THENCE S89°28'22"E A DISTANCE OF 2645.16 FEET;

THENCE N00°29'58"E A DISTANCE OF 1892.57 FEET;

THENCE N69°17'10"E A DISTANCE OF 2316.18 FEET;

THENCE N20°42'50"W A DISTANCE OF 330.72 FEET;

THENCE S32°24'18"W A DISTANCE OF 37.88 FEET;

THENCE S69°17'10"W A DISTANCE OF 70.40 FEET;

THENCE N03°42'50"W A DISTANCE OF 419.41 FEET;

THENCE S86°17'10"W A DISTANCE OF 100.00 FEET;

THENCE S03°42'50"E A DISTANCE OF 449.98 FEET;

THENCE S69°17'10"W A DISTANCE OF 1584.45 FEET;

THENCE N09°17'10"E A DISTANCE OF 392.25 FEET;

THENCE N80°42'50"W A DISTANCE OF 100.00 FEET;

THENCE S09°17'10"W A DISTANCE OF 449.98 FEET;

THENCE S69°17'10"W A DISTANCE OF 291.46 FEET;

THENCE N00°29'58"E A DISTANCE OF 376.79 FEET;

THENCE N00°30'26"E A DISTANCE OF 2605.56 FEET;

THENCE N89°39'42"E A DISTANCE OF 2464.75 FEET;

THENCE N89°56'22"E A DISTANCE OF 46.35 FEET;

THENCE N00°03'38"W A DISTANCE OF 52.02 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT FROM WHICH POINT THE RADIUS POINT BEARS N01°13'47"W;

THENCE 129.30 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 2248.49 FEET, A CENTRAL ANGLE OF 3°17'42" AND A CHORD BEARING N87°07'22"E;

THENCE S00°26'27"W A DISTANCE OF 1409.45 FEET;

THENCE S69°17'18"W A DISTANCE OF 99.80 FEET;

THENCE S32°24'18"W A DISTANCE OF 862.24 FEET;

THENCE S20°42'50"E A DISTANCE OF 390.74 FEET;

THENCE N69°17'10"E A DISTANCE OF 1989.49 FEET;

THENCE N77°48'06"E A DISTANCE OF 423.80 FEET;

THENCE S82°49'02"E A DISTANCE OF 126.98 FEET;

THENCE S89°44'11"E A DISTANCE OF 455.88 FEET;

THENCE S45°16'21"E A DISTANCE OF 34.94 FEET;

THENCE S00°12'15"W A DISTANCE OF 202.69 FEET;

THENCE S89°47'45"E A DISTANCE OF 173.99 FEET;

THENCE S00°12'13"W A DISTANCE OF 588.36 FEET;

THENCE S89°47'45"E A DISTANCE OF 70.71 FEET;

THENCE S42°00'15"E A DISTANCE OF 51.11 FEET;

THENCE S28°28'48"E A DISTANCE OF 151.02 FEET;

THENCE N80°29'50"W A DISTANCE OF 59.43 FEET;

THENCE S45°30'41"W A DISTANCE OF 55.23 FEET;

THENCE N89°33'55"W A DISTANCE OF 80.00 FEET;

THENCE S00°26'05"W A DISTANCE OF 566.08 FEET

THENCE N89°49'23"W A DISTANCE OF 2645.20 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 16,299,977.99 SQUARE FEET (374.1960 ACRES) OF LAND, MORE OR LESS, INCLUDING ANY EASEMENTS OF RECORD.

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS S89°56'54"E FOR THE NORTH LINE OF SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 1 NORTH, RANGE 3 WEST OF THE GILA AND SALT RIVER MERIDIAN BASED ON FIELD WORK AND CALCULATIONS PERFORMED USING VALUES SHOWN ON THAT RECORD OF SURVEY PLSS SUBDIVISION - MARICOPA COUNTY GEODETIC DENSIFICATION AND CADASTRAL SURVEY (GDACS) RECORD IN BOOK 638, PAGE 32 MARICOPA COUNTY RECORDS.

EXHIBIT E

FORM OF NOTICE OF AWARD OF CONSTRUCTION CONTRACT FOR THE CONSTRUCTION OF THE WORK FOR CITY OF BUCKEYE, ARIZONA ROOSEVELT STREET IMPROVEMENT DISTRICT

Pursuant to the provisions of Arizona Revised Statutes ("A.R.S.") §§ 48-571 through 48-619, inclusive, as amended, NOTICE IS HEREBY GIVEN of the following:

The Mayor and City Council of the City of Buckeye, Arizona (the "City"), in a public meeting on March 8, 2018, opened, examined and publicly declared all bids offered for the furnishing of all labor, material, transportation, services and equipment for the "Work" initiated by Resolution No. 14-17 (the "Resolution of Intention"). Thereafter on April 17, 2018, the Mayor and City Council of the City awarded a contract for the construction of the Work (the "*Construction Contract*") to Sunland Asphalt and Construction (the "Contractor"), who submitted the lowest and best bid of a responsible bidder for the kind of material and specifications set forth in the plans and specifications for the Construction Contract for the Work at the unit prices named for the Work in such bid on file in the office of the Clerk of the City. The aggregate amount bid by the Contractor on the Construction Contract, when the amounts per unit are extended against the quantities set forth in the District Engineer's estimate, is \$5,120,113.00. The District Engineer's estimate for such portion of the Work as originally stated in the Resolution of Intention and prior to revising the scope of the Work was \$14,784,269.00.

The Mayor and City Council of the City reserve the right to rescind the award of the Construction Contract if it is unable to provide funding for the Construction Contract or if, for any reason, the amount available after the sale of the hereinafter described improvement bonds is less than the amount necessary to pay the Construction Contract.

If, because of pending or threatened litigation concerning any one or more parcels subject to assessment with respect to the Work as hereinafter described, the City and the Contractor receive a written opinion of Bond Counsel stating that improvement bonds cannot be issued against such parcel or parcels, the City may then cause the Construction Contract to be modified to exclude from the Construction Contract some or all of the Work which will benefit the parcel or parcels in question. The filing of a certificate and request that bonds not be issued against any parcel pursuant to A.R.S. 48-597, as amended, may be deemed to be threatened litigation. The property owners have waived the ability object to the assessment or the award of the Construction Contract.

The Mayor and City Council of the City have determined that improvement bonds will be issued and delivered to represent the construction cost and all of the incidental costs of the Work, including engineering, printing, advertising and posting and preparation of proceedings. Such improvement bonds shall be issued and delivered under the provisions of A.R.S. Title 48, Chapter 4, Article 2, as amended, by the City, but payable only out of a special fund collected by the City from assessments levied and assessed against the property included within the district described in the Resolution of Intention in not to exceed twenty-five (25) annual installments from the assessments of \$25.00 or over remaining unpaid as of the date of said improvement bonds. The improvement bonds payable on the first day of January next after the collection of the first installment of the assessments can be made under the provisions of A.R.S. Title 48, Chapter 4, Article 2, as amended, and on the first day of January of each year thereafter until all are paid. Said improvement bonds shall bear interest at a rate of not to exceed seven and one-half percent (7.50%) per annum. Interest will be payable on the first day of January and July of each year.

Any owner, or any other person having an interest in any lot, piece or parcel of land situated within the above described district, who claims that any of the provisions, acts or proceedings relating to

the Work are irregular, defective, illegal, erroneous or faulty, may file with the City Clerk, 530 East Monroe Avenue, Buckeye, Arizona 85326, within 15 days from the date of the first publication of this Notice, a written notice specifying in what way said acts or proceedings are irregular, defective, illegal, erroneous or faulty; if no such notices are filed, the Superintendent of Streets will enter into the Construction Contract with the Contractor to provide the Work at the unit prices specified in said bid.

DATED: April __, 2018.

City Construction and Contracts Manager

Publish: Twice in the Arizona Republic

Mail: One copy to the winning bidder