



Contract Number: CTN PW 14*045
Effective Date: 10-01-2013
Term Date: 10-01-2038
Cost: 0
Revenue: \$4,750
Total: 0 NIE
Action: 08-01-2038
Renewal By: 10-01-2038
Term: 10-01-2038
Reviewed by: UG

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: October 1, 2013

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

A-Mart, L.L.C., a limited liability company, ("Licensee") has applied for a License for Bufferyard Encroachment in Right-of-Way to use and maintain existing bufferyard landscaping area located adjacent to tax parcel 401-06-066H within Pima County right-of-way described as McMahon Road in Township 12 South, Range 6 West, Section 10, G&SRB&M, Pima County, Arizona.

Pima County Department of Transportation staff has reviewed and approved the proposed License.

STAFF RECOMMENDATION(S):

The Board of Supervisors approve and the Chairman execute the License for Bufferyard Encroachment in Right-of-Way.

PIMA COUNTY COST: \$ -0- and/or REVENUE TO PIMA COUNTY: \$1,750.00

FUNDING SOURCE(S): N/A
(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

☐ YES ☒ NO

Board of Supervisors District:

1 ☐ 2 ☐ 3 ☒ 4 ☐ 5 ☐ All ☐

IMPACT:

IF APPROVED:

Licensee will be authorized to continue to use and maintain the existing bufferyard landscaping area within County right-of-way and will remain in compliance with the property zoning code.

IF DENIED:

Licensee will not be authorized to use and maintain the existing bufferyard landscaping area within County right-of-way and will not be in compliance with the property zoning code.

DEPARTMENT NAME: Public Works Real Property Services

CONTACT PERSON: Dana Hausman TELEPHONE NO.: 724-6713

For Recorder's Use Only

CONTRACT
NO. <u>CTN. PW. 14000000000000000000 045</u>
AMENDMENT NO. _____
This number must appear on all invoices, correspondence and documents pertaining to this contract.

**PIMA COUNTY
LICENSE
FOR BUFFERYARD ENCROACHMENT IN RIGHT-OF-WAY**

THIS AGREEMENT is made between Pima County, a political subdivision of the State of Arizona, ("County"), and A-MART, L.L.C., a limited liability company, ("Licensee"). The parties agree as follows:

1. Grant of Permission. In consideration of Licensee's annual payment of any applicable License fee and the promises contained herein, County hereby gives permission, revocable and terminable as provided herein, to Licensee to encroach on that portion of County's right-of-way described as McMahon Road in Ajo, Arizona, for the purpose of bufferyard landscaping (the "Encroachment"). The right-of-way and the Encroachment are described on the attached **Exhibit "A"** and depicted on the attached **Exhibit "A-1"**.
2. Licensee's Maintenance Obligation. Licensee shall maintain all landscaping in the Bufferyard Encroachment as required by the Pima County Zoning Code. Licensee's failure to maintain the Encroachment shall be cause for termination of this License, and all terms of Paragraph 13 shall then apply.
3. Hold Harmless. All costs associated with the Encroachment shall be at the sole expense of Licensee. Licensee assumes responsibility and liability for any injury or damage to the above described right-of-way or to any person while using the above described right-of-way caused

by or arising out of the exercise of this License. To the fullest extent allowed by law, Licensee indemnifies, defends, and holds harmless County, its officers, departments, employees, and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands, or damages of any kind or nature arising out of this License, which are attributed, in whole or in part to Licensee's use of the rights of way, or to any act or omission of the Licensee, its agents, employees, or anyone acting under its direction, control or on its behalf, whether intentional or negligent in connection with or incident to this License. Licensee's responsibilities shall not extend to the negligence of County, its officers, departments, employees and agents. This indemnity shall survive the termination of the License.

4. Insurance. Licensee shall obtain a \$1,000,000 commercial general liability insurance policy naming County as Additional Insured to cover the Encroachment within the County's right-of-way. County reserves the right to require additional insurance is County's sole discretion. The policy shall be maintained throughout the term of this License by the Licensee. This License shall terminate if insurance lapses. A certificate of insurance shall be supplied on an annual basis to County with the stipulation that the insurance company shall notify County in writing of any intent to cancel the liability insurance. This notification shall be required no less than thirty days prior to cancellation and Licensee shall remove the Encroachment at its expense within thirty days of notification.
5. Annual Fee. Pursuant to Pima County Board of Supervisors Policy Number F54.3, Licensee shall pay an annual fee to County in the amount of **\$70.00**, due upon execution of this License and on each anniversary of the date that the Pima County Board of Supervisors executes this License.
6. Permits. This License is not a right of way use permit. Following the granting of this License by County, Licensee shall obtain all applicable permits, which may include a Right-of-Way Use Permit, a County Use Permit, Building Permit or Floodplain Use Permit.
7. Compliance With Highway Safety. The Encroachment shall not interfere with the safety of the traveling public or the authorized public use of right-of-way, and may not otherwise interfere with the general health, safety and welfare of the citizens of Pima County. The Encroachment shall be maintained by Licensee so as not to interfere with safe sight distance or safe travel along the right-of-way.
8. Term. This License shall run for a period of 25 (twenty five) years from the date this License is executed by Pima County Board of Supervisors. Notwithstanding any other condition, this License may be terminated by either party or revoked by County upon ninety days' written notice to the other. County may terminate or revoke by recording a termination or revocation statement executed by the Manager of the Real Property Services of the Public Works Administration. When this License lapses, terminates or is revoked, Licensee shall remove the Encroachment from the right-of-way at no expense to County and to the satisfaction of

County within 90 days. Licensee shall restore the right-of-way to the pre-License condition or as may be mutually agreed upon. The indemnifications set forth in Paragraph 3 above shall survive the termination or revocation of this License.

9. Underground Facilities. If Encroachment includes any underground facilities, Licensee is required to maintain a membership with Arizona Blue Stake, Inc., or its successors or assigns, throughout the term of this License.
10. Requirement of Zoning Code. The subject Encroachment is a requirement of the Pima County Zoning Code. Upon the termination of this License, Licensee's abutting property shall still be subject to the zoning requirements for landscaping buffer, and Licensee shall provide such buffer within Licensee's own property or be in violation of the Zoning Code.
11. Licensee Has No Interest or Estate. Licensee agrees that it has no claim, interest, or estate at any time in the right-of-way by virtue of this License or its use hereunder. Upon termination or revocation of this License, Licensee shall have no right of entry upon the right-of-way.
12. License Runs With the Land. The provisions, conditions, restrictions and covenants of this License are both personal and shall run with the land described on the attached **Exhibit "B"** and shall be binding on all persons owning or occupying any portion of the land. Conveyance of the land will not relieve the prior owner of any obligation that accrued prior to conveyance.
13. Removal of Encroachment. Upon termination or revocation of this License for any reason or in the event partial or total removal of the Encroachment is required by County, Licensee shall promptly remove all or part of the Encroachment as required by County at Licensee's sole expense and to the satisfaction of County. Licensee shall not seek compensation or financial reimbursement for any and all costs associated with the removal or relocation of the Encroachment from County. In the event the Encroachment is not promptly removed by Licensee as directed by County, County shall have the right to remove the Encroachment and Licensee hereby agrees to reimburse the total amount of County's costs incurred for the partial or complete removal of the Encroachment within sixty (60) days of receipt of an invoice from County for said costs. In the event Licensee fails to reimburse County for the costs of removal within the 60-day period, County shall immediately file a lien upon the property described in **Exhibit "B"** herein, which shall be a continuing lien, and Licensee hereby consents to the placement of such a lien on said property. Said lien may be enforced by foreclosure in like manner as a mortgage on real property. County shall be entitled to County's reasonable attorney's fees and interest at the rate established by A.R.S. § 44-1201(A), occurring from the date the costs are incurred.
14. Conflict of Interest. This Agreement is subject to A.R.S. § 38-511 which provides for cancellation of contracts by Pima County for certain conflicts of interest.

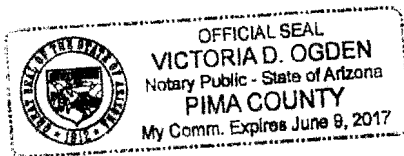
LICENSEE: A-MART, L.L.C., a limited liability company

By: L. Welker

Title: Member

State of Arizona)
) SS
County of Pima)

This instrument was acknowledged before me this 20th day of AUGUST, 2013,
by LAMAR J WELKER, as MEMBER of
A-MART, L.L.C.



Victoria D. Ogden
Notary Public

My Commission Expires:

June 9, 2017

IN WITNESS WHEREOF, the parties hereto have executed this License.

PIMA COUNTY, ARIZONA

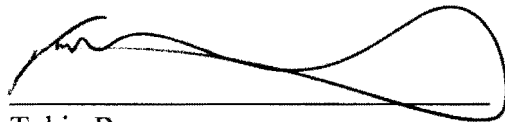
Ramón Valadez, Chairman, Pima County Board of Supervisors

Date: _____

ATTEST:

Robin, Brigode, Clerk, Pima County Board of Supervisors

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read 'Tobin Rosen', written over a horizontal line.

Tobin Rosen
Deputy County Attorney

EXHIBIT A

DESCRIPTION

A BUFFERYARD ENCROACHMENT AREA IN SECTION 10, TOWNSHIP 12 SOUTH, RANGE 6 WEST, GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA.

COMMENCING AT THE CENTER 1/4 CORNER OF SAID SECTION 10;

THENCE SOUTH 89°59'00" EAST, 110.56 FEET;

THENCE SOUTH 1°05'52" WEST, 1287.85 FEET TO THE SOUTHEASTERLY CORNER OF PARCEL 4;

THENCE NORTH 89°59'00" WEST, 104 FEET MORE OR LESS TO THE EASTERLY SIDE OF A DRIVEWAY BEING THE POINT OF BEGINNING OF EASEMENT A;

THENCE SOUTH 0°1'00" WEST, 10.00 FEET MORE OR LESS;

THENCE SOUTH 89°59'00" EAST, 104.00 FEET MORE OR LESS;

THENCE NORTH 1°05'52" EAST, 10.00 FEET MORE OR LESS ;

THENCE NORTH 89°59'00" WEST, 104.00 FEET MORE OR LESS WHICH IS A LINE COINCIDENT WITH THE SOUTHERLY PROPERTY LINE, TO THE TERMINUS OF EASEMENT A AND THE POINT OF BEGINNING;

THENCE NORTH 89°59'00" WEST, 30.00 FEET MORE OR LESS ACROSS SAID DRIVEWAY TO POINT OF BEGINNING OF EASEMENT B;

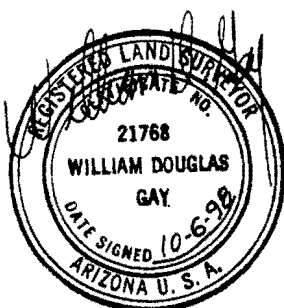
THENCE NORTH 89°59'00" WEST, 26.00 FEET MORE OR LESS WHICH IS A LINE COINCIDENT TO THE SOUTHERLY PROPERTY LINE;

THENCE SOUTH 0°1'00" WEST, 10.00 FEET MORE OR LESS;

THENCE SOUTH 89°59'00" EAST, 26.00 FEET MORE OR LESS TO THE WESTERLY EDGE OF SAID DRIVEWAY;

THENCE NORTH 0°1'00" EAST, 10.00 FEET MORE OR LESS TO THE TERMINUS OF EASEMENT B AND THE POINT OF BEGINNING;

END OF DESCRIPTION

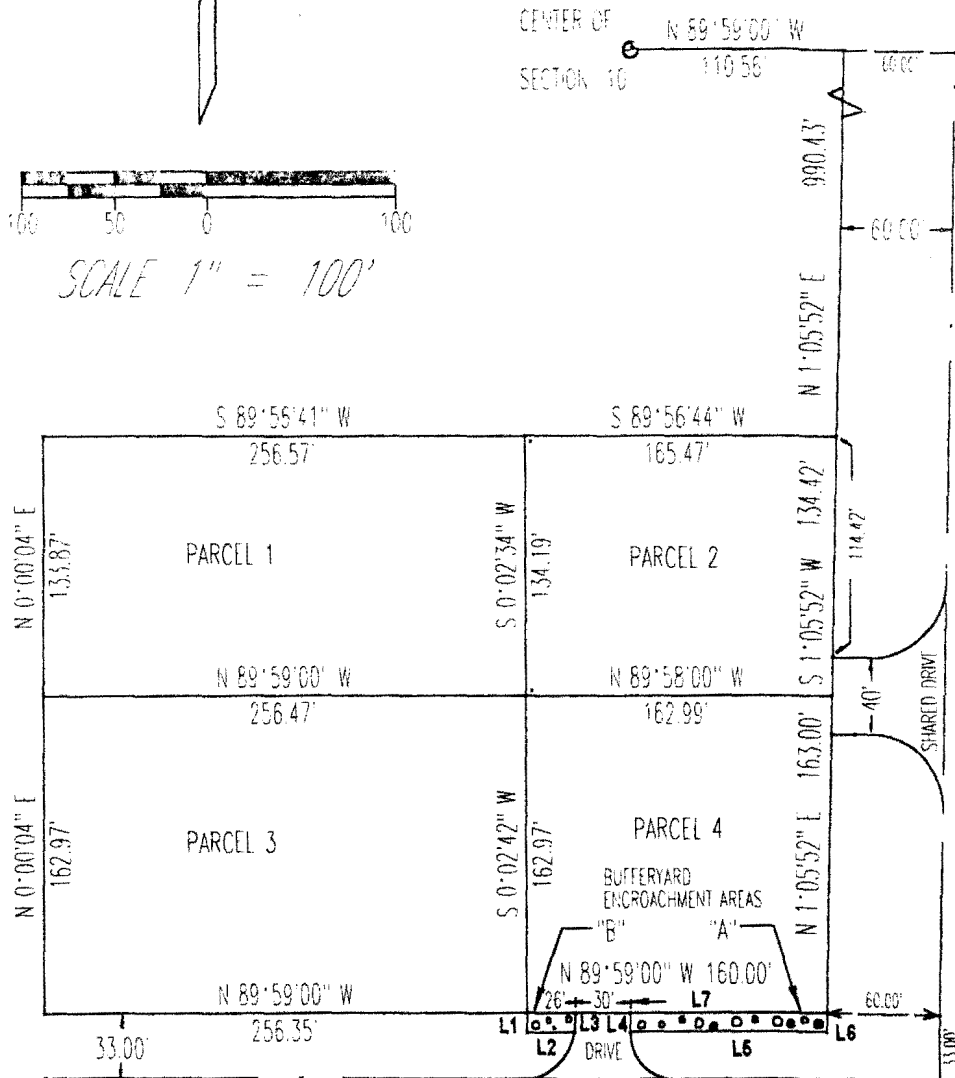


WILLIAM D. GAY
R.L.S. 21768

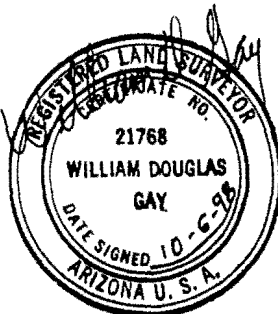
EXHIBIT A - 1



SCALE 1" = 100'



	BEARING	DIST
L1	S 0°1'00" W	10.00'
L2	S 89°59'00" E	26.00'
L3	N 0°1'00" E	10.00'
L4	S 0°1'00" W	10.00'
L5	S 89°59'00" E	104.00'
L6	N 1°05'52" E	10.00'
L7	N 89°59'00" W	104.00'



BUFFERYARD ENCROACHMENT
AREA
TO PIMA COUNTY
JANICE AND LAMAR WELKER
SEC. 10 T 12 S., R. 6 W., G. & S. R. 12.
PIMA COUNTY, ARIZONA

WILLIAM D. GAY R.L.S. 21768 (520) 297-1606
301 W. GOLF VIEW DR.
TUCSON, AZ 85737

EXHIBIT "B"

PARCEL #4

That portion of the Southwest one-quarter ($\frac{1}{4}$) of Section 10, Township 12 South, Range 6 West, Gila and Salt River Meridian, Pima County, Arizona:

Commencing at the center $\frac{1}{4}$ corner of said Section 10; Thence South $89^{\circ}59'00''$ East, 110.59 feet to a point on the westerly right-of-way on the Gila Bend Highway (Arizona State Highway 85); Thence South $1^{\circ}05'52''$ West, 1124.85 feet along the westerly right-of-way of said Highway (Arizona State Highway 85); TO THE POINT OF BEGINNING; Thence South $1^{\circ}05'52''$ West, 163.00 feet; Thence North $89^{\circ}59'00''$ West, 160.00 feet; Thence North $0^{\circ}02'35''$ East, 162.97 feet; Thence South $89^{\circ}59'00''$ East 163.00 feet to THE POINT OF BEGINNING.

Tract contains 26,320 square feet (0.6042 acres) more or less.