



Contract Number: C.T. PW-15-X-188  
Effective Date: 11-18-14  
Term Date: 11-17-2039  
Cost: \$4,972. -  
Revenue: \_\_\_\_\_  
Total: \_\_\_\_\_ NTE: \_\_\_\_\_  
Action: \_\_\_\_\_  
Renewal By: 8-1-2039  
Term: 11-17-2039  
Reviewed by: XJL

## BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: 11/18/14

### **ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:**

#### 1. Amendment of State Land Department Right of Way Lease

This is an Amendment of State Lease No. 16-107050 authorizes Pima County to continue to operate existing sewer facilities within a 30 foot right-of-way across the State Land in Section 8, Township 15 South, Range 12 East, in perpetuity.

This renewal has been reviewed and approved by appropriate County staff

Cost: State Land held public auction on September 4, 2014, one-time cost to County  
\$4,972.00

#### *CONTRACT NUMBER (If applicable):*

**STAFF RECOMMENDATION(S):** It is recommended that the Pima County Board of Supervisors approve and authorize the Chair to execute the Amendment to Right of Way No. 16-107050, to the State of Arizona which will allow Pima County continued use of the right of way to operate and maintain a public sewer across State Land.

CORPORATE HEADQUARTERS: \_\_\_\_\_

Page 1 of 2

Ver. - 1

Vendor. 1

Pgs. - 17

To: COB - 11-5-14

Agenda 11-18-14

(2)

**CLERK OF BOARD USE ONLY: BOS MTG. \_\_\_\_\_**

**ITEM NO. \_\_\_\_\_**

**PIMA COUNTY COST: \$4,972.00 and/or REVENUE TO PIMA COUNTY: \$0**

**FUNDING SOURCE(S): Object code 5552, Unit 1187**

**(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)**

**Advertised Public Hearing:**

		<b>YES</b>	<b>X</b>	<b>NO</b>
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**Board of Supervisors District:**

1		2		3	<b>X</b>	4		5		<b>All</b>	
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**IMPACT:**

**IF APPROVED:** Pima County will acquire a lease from the Arizona State Department, which is needed to for the continued operation and maintenance of existing sewer facilities on State Land.

**IF DENIED:** Pima County will no longer be authorized to operate and maintain a public sewer system on State Land and may be required to re-locate the existing sewer facilities.

**DEPARTMENT NAME:** Public Works Real Property Services

**CONTACT PERSON:** Rita Leon **TELEPHONE NO.:** 724-6462

**STATE LAND DEPARTMENT  
STATE OF ARIZONA**

## AMENDMENT TO RIGHT OF WAY

NO. 16-107050

## **The Right of Way between the State of Arizona, Grantor, and**

## **PIMA COUNTY**

**Grantee, by mutual consent, has been amended as follows:**

1.83 acres described as S. 30FT of N. 45FT of Lots 1 thru 9 in Section 8, Township 15 South, Range 12 East have been added as requested. Additional Conditions have been added as required.

**This Right of Way Amendment, when executed by the State Land Commissioner (Grantor) and the above mentioned Grantee and is affixed to the original Right of Way, shall be in full force and effect. All other terms and conditions of the Right of Way apply and shall remain in full force and effect.**

**IN WITNESS HEREOF, the parties hereto have signed this Right of Way effective the day and year set forth previously herein.**

**STATE OF ARIZONA, GRANTEE  
Arizona State Land Commissioner**

## Pima County

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**GRANTEE**

✓ SEE ATTACHED

Dato

By:

Date

**Printed Name**

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**Title**

✓ Pima County Real Property S  
201 N. Stone Ave 6th floor

### Address

✓ Tucson, Arizona 85701

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**City**

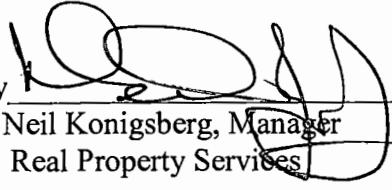
**State Zip**

(SEAL)

Recommended to the Board of  
Supervisors for Approval:

By Jackson Jenkins

Jackson Jenkins, Director  
Regional Wastewater Reclamation

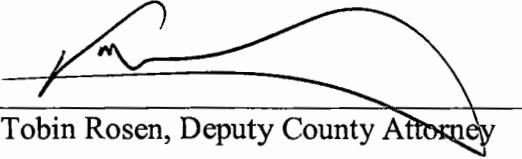
By 

Neil Konigsberg, Manager  
Real Property Services

By John Bernal

John Bernal,  
Deputy County Administrator-Public Works

Approved as to form:

  
Tobin Rosen, Deputy County Attorney

Approved and accepted by Pima County:

Attest:

Robin Brigode, Clerk of the Board of Supervisors

Chairman, Pima County Board of  
Supervisors

## **ADDITIONAL CONDITIONS**

16-107050

Page 1 of 14

### **1. LEGAL DESCRIPTION, RENT AND PURPOSE**

**1.1** A legal description and/or a visual depiction of this Right of Way is detailed in EXHIBIT A attached hereto. Subject to Grantor's rules and policies then in place, and as a result of construction-related restrictions, Grantor and Grantee may agree to modify the legal description by the Grantee submitting "as built" or "proposed realignment" legal descriptions, depending on the situation, to Grantor for Grantor's review. If approved by Grantor, and additional acreage is impacted, Grantee agrees to pay an appraised or pro-rated charge as Grantor determines is appropriate. No refund will be made for a reduction in acreage.

**1.2** Grantor reserves the right to grant additional access rights, or any other rights not in conflict with the rights granted herein, to other parties at the Grantor's sole discretion.

### **2. CONSTRUCTION, MAINTENANCE AND OPERATION**

**2.1** Grantee is responsible for complying with all federal, state and local guidelines in regards to the construction, maintenance and operation of this Right of Way grant and its associated appurtenances.

**2.2** Grantee shall conduct all construction and maintenance activities in a manner that will minimize disturbance to surface features affecting adjacent land values, including, but not limited to, vegetation, drainage channels and stream banks.

**2.3** Grantee agrees that any rubbish or debris from construction and maintenance work shall be removed and properly disposed of at its expense. Disposal of construction-related and maintenance-related materials on State Trust land is strictly prohibited.

**2.4** Specific sites where construction and maintenance equipment and vehicles shall not be allowed (e.g. archaeological sites, areas with threatened or endangered species, or fragile watersheds) shall be clearly marked onsite by the Grantee prior to the beginning of any construction, maintenance or other ground disturbing activities. Grantee shall take any and all steps necessary to ensure that these sites are not touched.

**2.5** All equipment shall be removed from the site within seven (7) days of project completion.

## ADDITIONAL CONDITIONS

16-107050

Page 2 of 14

**2.6** Grantee shall be responsible for weed control on disturbed areas within the limits of this Right of Way, and shall be responsible for consultation with the Grantor and/or local authorities for acceptable weed control methods.

**2.7** For construction after Commencement Date of this Right of Way, disturbed areas shall be restored and rehabilitated according to a plan submitted and approved in advance by the Grantor prior to commencement of construction. The plan shall include, but not be limited to, reseeding, reforestation, erosion control, and watershed protection measures.

**2.8** For ground disturbance after Commencement Date of this Right of Way, all rock brought to the surface along with topsoil and overburden from the affected State Trust lands shall be salvaged and stockpiled separately in a manner that replacement shall utilize one hundred (100%) percent of the materials upon project completion. Excess rock unsuitable for scattering shall be disposed of in a manner and location that is authorized by the Grantor.

**2.9** Grantee shall maintain the Right of Way grant area in the manner described above during the term of this easement. Grantee agrees to complete any necessary restoration and rehabilitation to the satisfaction of the Grantor within ninety (90) days of written notification of non-compliance.

### **3. ENVIRONMENTAL MATTERS AND INDEMNITY**

The following conditions shall supplement the terms and provisions governing environmental matters as set forth in the Right of Way boiler to which these Conditions are stated below.

**3.1** For purposes of this Right of Way, the term "Environmental Laws" shall include but not be limited to any relevant federal, state or local environmental laws, and the regulations, rules and ordinances, relating to environmental matters, and publications promulgated pursuant to the local, state, and federal laws and any rules or regulations relating to environmental matters. For the purpose of this Right of Way, the term "Regulated Substances" shall include but not be limited to substances defined as "regulated substance", "solid waste", "hazardous waste", "hazardous materials", "hazardous substances", "toxic materials", "toxic substances", "inert materials", "pollutants", "toxic pollutants", "herbicides", "fungicides", "rodenticides",

## ADDITIONAL CONDITIONS

16-107050

Page 3 of 14

"insecticides", "contaminants", "pesticides", "asbestos", "environmental nuisance", "criminal littering", or "petroleum products" as defined in Environmental Laws.

3.2 Grantee shall strictly comply with all Environmental Laws, including, without limitation, water quality, air quality; and handling, transportation, storage, treatment, or disposal of any Regulated Substance on, under, or from the Premises. Without limiting the foregoing, compliance includes that Grantee shall: (1) comply with all reporting obligations imposed under Environmental Laws; (2) obtain and maintain all permits required by Environmental Laws, and provide a copy to Grantor within ten (10) business days of receipt of the Right of Way; (3) provide copies of all documentation required by Environmental Laws to Grantor within ten (10) business days of Grantee's submittal and/or receipt of the documentation; (4) during the term of Right of Way, provide copies of all information it receives or obtains regarding any and all environmental matters relating to the Premises, including but not limited to environmental audits relating to the Premises regardless of the reason for which the information was obtained or whether or not the information was required by Environmental Laws; (5) prevent treatment, storage, disposal, handling or use of any Regulated Substances within the Premises without prior written authorization from Grantor.

3.3 Grantee at all times shall employ or designate an existing employee (the "Designated Compliance Officer") who is responsible for knowing all Environmental Laws affecting Grantee and Grantee's business and monitoring Grantee's continued compliance with applicable Environmental Laws. Upon request by Grantor, Grantee shall make the Designated Compliance Officer available to discuss Grantee's compliance, answer any questions, and provide such reports and confirming information as Grantor may reasonably request.

3.4 At any time, Grantor may request Grantee to provide an environmental audit of the Premises performed by an Arizona registered professional engineer or an Arizona registered geologist. Grantee shall pay the entire cost of the audit.

3.5 Hazardous material generated (motor oil, paint, etc.) shall be disposed of properly or used in a way which will minimize impact on vegetation.

3.6 At any time, during the term of the Right of Way, Grantor may require Grantee to obtain one Phase I environmental assessment of the Premises performed by an Arizona registered professional engineer or an Arizona registered geologist. If based upon the Phase I environmental assessment or its own independent investigation, Grantor

## ADDITIONAL CONDITIONS

16-107050

Page 4 of 14

identifies any possible violation of Environmental Laws or the terms of this Right of Way, Grantor may require Grantee to conduct additional environmental assessments as Grantor deems appropriate for the purpose of ensuring that the Premises are in compliance with Environmental Laws. The Phase I assessment, or any other assessment required by Grantor, shall be obtained for the benefit of both Grantee and Grantor. A copy of the Phase I report shall be provided both to Grantee and Grantor. Grantor, in its sole discretion, shall have the right to require Grantee to perform additional assessments of any damage to the Premises arising out of any violations of Environmental Laws. If Grantee fails to obtain any assessments required by Grantor, Grantee shall pay the entire costs of any and all assessments required by Grantor, notwithstanding the expiration or termination of the Right of Way.

3.7 Prior to the termination of the Right of Way, Grantee shall restore the Premises by removing any and all Regulated Substances. In addition, the restoration shall include, but not be limited to, removal of all waste and debris deposited by Grantee. If the Premises or any portions thereof are damaged or destroyed from the existence or presence of any Regulated Substance or if the Premises or any portions thereof are damaged or destroyed in any way relating to or arising out of the removal, treatment, storage, disposition, mitigation, cleanup or remedying of any Regulated Substance, Grantee shall arrange, at its expense, for the repair, removal, remediation, restoration, and reconstruction to the Premises to the original condition existing on the date that Grantee first occupied the Parcel, to the satisfaction of Grantor. In any event, any damage, destruction, or restoration by Grantee shall not relieve Grantee from its obligations and liabilities under this Right of Way. Grantee's restoration obligations under this Section shall survive the expiration or the termination of the Right of Way.

3.8 Grantee shall defend, indemnify and hold Grantor harmless from and against any and all liability, obligations, losses, damages, penalties, claims, environmental response and cleanup costs and fines, and actions, suits, costs, taxes, charges, expenses and disbursements, including legal fees and expenses of whatever kind or nature (collectively, "claims" or "damages") imposed on, incurred by, or reserved against Grantor in any way relating to or arising out of any non-compliance with any Environmental Laws, the existence or presence of any Regulated Substance, on, under, or from the Subject Land, and any claims or damages in any way relating to or arising out of the removal, treatment, storage, disposition, mitigation, cleanup or remedying of any Regulated Substance on, under, or from the Subject Land by Grantee, its agents, contractors, or subcontractors.

## ADDITIONAL CONDITIONS

16-107050

Page 5 of 14

**3.9** This indemnity shall include, without limitation, claims or damages arising out of any and all violations of Environmental Laws regardless of any real or alleged fault, negligence, willful misconduct, gross negligence, breach of warranty, or strict liability on the part of any of the indemnitees. This indemnity shall survive the expiration or termination of this Right of Way and/or transfer of all or any portion of the Subject Land and shall be governed by the laws of the State of Arizona.

**3.10** In the event any action or claim is brought or asserted against Grantor which is or may be covered by this indemnity, Grantee shall fully participate, at Grantee's expense, in the defense of the action or claim including but not limited to the following: (1) the conduct of any required cleanup, removal or remedial actions and/or negotiations, (2) the conduct of any proceedings, hearings, and/or litigation, and (3) the negotiation and finalization of any agreement or settlement. Grantor shall retain the right to make all final decisions concerning the defense. Grantee's obligations to participate in the defense under this Section shall survive the expiration or termination of the Right of Way.

### **4. CULTURAL RESOURCES AND NATIVE PLANTS**

**4.1** Grantee shall ensure that any prehistoric, historic, or paleontological remains discovered during monitoring, construction or maintenance are reported to the Grantor and the Arizona State Museum, and that any such discoveries are otherwise treated according to A.R.S. § 41-844.

**4.2** Grantee shall supply Grantor with any documentation required to consult with the State Historic Preservation Office, as required pursuant to the State Historic Preservation Act (A.R.S. § 41-861 et seq).

**4.3** Prior to any ground disturbance, and at the request of Grantor, Grantee agrees to conduct and submit a plant inventory/plant salvage plan to the Grantor. Payment will be required prior to any ground disturbance for any flora cut, removed and/or destroyed.

**4.4** Grantee shall minimize the removal of existing vegetation within the project area to the greatest extent possible.

**4.5** Grantee shall salvage or replant cactus and other protected plants.

## **ADDITIONAL CONDITIONS**

16-107050

Page 6 of 14

**4.6** Grantee is prohibited to blade, scrape or remove any existing vegetation without authorization from Grantor.

### **5. SERVICE / ACCESS ROADS**

**5.1** Grantee shall acquire any permits necessary prior to the construction and maintenance of its service roads. Grantee shall construct new service roads with widths as narrow as possible.

**5.2** Material for service road construction and maintenance (i.e. fill dirt, sand and gravel, etc.) may not be acquired from State Trust lands without the proper permits and authorization.

**5.3** Service roads shall be maintained in substantially the same condition as they exist at the time the Right of Way is issued except, if not drivable, they may be made drivable.

**5.4** Grantee shall not fence nor gate the service roads without the prior written permission of the Grantor.

**5.5** The service roads shall only be used by the Grantee in conjunction with said Right of Way grant and associated appurtenances.

**5.6** Grantee shall avoid using service roads during wet weather or when too soft to travel over. The soil shall be deemed too wet to adequately support equipment if such equipment creates ruts in excess of six (6) inches deep.

**5.7** Maintenance of the service roads may include dust control measures for the term of this Right of Way.

### **6. EXISTING LESSEES**

**6.1** Grantee shall keep all gates closed and ensure its contractors do the same. Grantor reserves the right to require cattle guards if Grantor determines gates are being left open or fencing has been removed or damaged by the Grantee, its employees or contractors.

## **ADDITIONAL CONDITIONS**

16-107050

Page 7 of 14

**6.2 Any grazing-related improvements removed or damaged due to construction, operation and maintenance of this Right of Way shall be replaced and/or reconstructed immediately. Cost of replacement and reconstruction shall be the responsibility of the Grantee.**

**6.3 Grantee shall provide Grantor with documentation of the surface lessee's consent prior to making any alterations to existing improvements.**

**6.4 If construction or maintenance occurs during periods of livestock grazing, Grantee will take necessary measures to insure livestock protection and containment.**

**6.4.1 Grantee agrees to notify Grazing Lessee(s) 30 days prior to beginning construction or maintenance, and inquire as to the presence/absence of livestock.**

## **7. MISCELLANEOUS**

**7.1 Grantee shall not alter nor cause ponding, nor any damage up or down stream of any water crossing.**

**7.2 No altering of existing drainages or drainage structures is authorized under this instrument.**

**7.3 If any provision or agreement of this Right of Way is found invalid by any tribunal, such invalidity shall not affect the validity of the remaining provisions hereof.**

**7.4 The following provision shall be deemed added at the end of Section 6.2 of Article 6 of the Right of Way to which these Additional Conditions are attached as if set forth therein verbatim:**

**"Any violation by Grantee of any of the terms of this Right of Way constitutes a breach. Upon a breach by Grantee which is not cured within sixty (60) days after the date a notice of breach is sent by certified mail to Grantee to the most recent address for Grantee as shown in the files of Grantor, this Right of Way shall become void and the right to use the Subject Land and all of the rights of Grantee hereunder shall revert to Grantor at the expiration of the aforesaid sixty (60) day period."**

## **ADDITIONAL CONDITIONS**

16-107050

Page 8 of 14

**7.5 Attached hereto as EXHIBIT B is an insurance rider which shall supplement the terms and provisions governing insurance as set forth in the Right of Way form to which these Additional Conditions are attached.**

### **8. EXHIBITS**

**8.1 The following exhibits are attached to these Additional Conditions and made a part hereof:**

**EXHIBIT A Legal Description and/or Visual Depiction of Right of Way**

**EXHIBIT B Insurance Rider**

## ADDITIONAL CONDITIONS

16-107050

Page 9 of 14

### EXHIBIT A - LEGAL DESCRIPTION AND/OR VISUAL DEPICTION OF RIGHT OF WAY

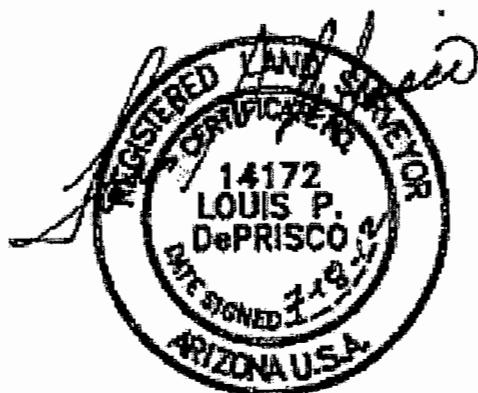
All that portion of Lots 1 through 9, located in the North half of the Northeast quarter for Section 8, Township 15 South, Range 12 East, Gila and Salt River Meridian, Pima County, Arizona, as shown on the United States Department of the Interior Bureau of Land Management, Dependant Resurvey and Subdivision of Sections 7 and 8 Township 15 South, Range 12 East officially filed November 10<sup>th</sup>, 1955 more particularly described as follows;

The Southerly 30.00 feet of the Northerly 45.00 feet of Lots 1 through 9 of the Northeast quarter of Section 8.

Said Parcel contains 79,590 square feet more or less = 1.8271 Acre

Prepared by

URBAN ENGINEERING, INC.



Expires: 09/30/14

## ADDITIONAL CONDITIONS

16-107050

Page 10 of 14

### EXHIBIT B

#### INSURANCE RIDER TO STATE LAND DEPARTMENT

This Rider is attached to and made a part of the above-referenced Right of Way as if set forth therein verbatim.

**R-1 Indemnity.** Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

In addition, Grantee shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless the State of Arizona, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Grantee's contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

**R-2 Insurance Requirements for Any Contractors Used by a Party to the Intergovernmental Agreement.** (Note: this applies only to Contractors used by a governmental entity, not to the governmental entity itself.) The insurance requirements herein are minimum requirements and in no way limit the indemnity covenants contained in the Intergovernmental Agreement. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the governmental entity or Contractor from

## ADDITIONAL CONDITIONS

16-107050

Page 11 of 14

liabilities that might arise out of the performance of the work under this Right of Way by the Contractor, his agents, representatives, employees or subcontractors, and Contractor and the governmental entity are free to purchase additional insurance.

**A. Minimum Scope and Limits of Insurance:** Contractor shall provide coverage with limits of liability not less than those stated below.

**1. Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability.

<b>General Aggregate:</b>	<b>\$2,000,000.00</b>
<b>Products-Completed Operations Aggregate:</b>	<b>\$1,000,000.00</b>
<b>Personal and Advertising Injury:</b>	<b>\$1,000,000.00</b>
<b>Each Occurrence:</b>	<b>\$1,000,000.00</b>
<b>Blanket Contractual Liability-Written and Oral:</b>	<b>\$1,000,000.00</b>
<b>Damage to Rented Premises:</b>	<b>\$ 50,000.00</b>
<b>Each Occurrence</b>	<b>\$1,000,000.00</b>

The policy shall be endorsed to include the following additional insured language: "The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor." Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Right of Way.

Policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

**2. Business Automobile Liability.** Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Right of Way.

- Combined Single Limit (CSL) \$1,000,000

a. The policy shall be endorsed to include the following additional insured language: "The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional

## ADDITIONAL CONDITIONS

16-107050

Page 12 of 14

insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor". Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Right of Way.

b. Policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

c. Policy shall contain a severability of interest provision.

IF GRANTEE HAS CERTIFIED IN THE APPLICATION ADDENDUM FOR THIS RIGHT OF WAY THAT GRANTEE WILL NOT BE ENGAGED IN THE CONDUCT OF BUSINESS WITHIN THE SUBJECT LAND GRANTEE SHALL NOT BE REQUIRED TO CARRY THE FOREGOING BUSINESS AUTOMOBILE LIABILITY INSURANCE.

### 3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000

a. Policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. § 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

GRANTEE HAS CERTIFIED IN THE APPLICATION ADDENDUM FOR THIS RIGHT OF WAY THAT GRANTEE WILL NOT BE ENGAGED IN THE CONDUCT OF BUSINESS WITHIN THE SUBJECT LAND GRANTEE SHALL NOT BE REQUIRED TO CARRY THE FOREGOING WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE.

B. Additional Insurance Requirements: The policies are to contain, or be endorsed to contain, the following provisions:

1. The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary insurance and that any insurance carried by the

## ADDITIONAL CONDITIONS

16-107050

Page 13 of 14

Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S § 41-621 (E).

2. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of its Contract with the other governmental entity(ies) party to the IGA.

**C. Notice of Cancellation:** With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this Right of Way in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to the Arizona State Land Department, 1616 W. Adams, Phoenix, Arizona 85007, and shall be sent by certified mail, return receipt requested.

**D. Acceptability of Insurers:** Contractors insurance shall be placed with companies duly licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII or duly authorized to transact Workers' Compensation insurance in the State of Arizona. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

**E. Verification of Coverage:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Right of Way. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Right of Way must be in effect at or prior to commencement of work under this Right of Way and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Right of Way, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Right of Way shall be sent directly to the Arizona State Land Department, 1616 W. Adams, Phoenix, Arizona 85007. The Right of Way number and project description are to be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Right of Way at any time.

## ADDITIONAL CONDITIONS

16-107050

Page 14 of 14

**F. Subcontractors:** Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the State of Arizona separate certificates for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

**G. Approval:** Any modification or variation from the *insurance requirements* in any Intergovernmental Agreement must have prior approval from the State of Arizona Department of Administration, Risk Management Division, whose decision shall be final. Such action will not require a formal Right of Way amendment, but may be made by administrative action.

**H. Exceptions:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university then none of the above shall apply.

APPENDIX A

STATE OF ARIZONA LAND DEPARTMENT  
1616 W. ADAMS  
PHOENIX, AZ 85007

RUN DATE: 12 September 2014  
RUN TIME: 23:12 PM  
PAGE: 1

KE-LEASE# 016-107050-00-001 APPTYPE: AMENDMENT  
AMENDMENT#: 0

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LAND#	LEGAL DESCRIPTION	AUS	ACREAGE
15.0-S-12.0-E-08-10-031-9009	W 20FT OF LOTS 9 27 42 AND 60 N 30FT OF LOTS 1 THRU 7 AND 9	0.00	3.040
	TOTALS	0.00	3.040