



## **BOARD OF SUPERVISORS AGENDA ITEM REPORT** **CONTRACTS / AWARDS / GRANTS**

Requested Board Meeting Date: April 19, 2016

or Procurement Director Award ☐

**Contractor/Vendor Name (DBA):** Clear Channel Outdoor, Inc

**Project Title/Description:**

Lease Agreement

**Purpose:**

Staff recommends approval of a Lease Agreement between Clear Channel Outdoor, Inc., and the Regional Flood Control District for outdoor advertising on property acquired by the District located along I-10, south of Sunset Road. The District acquired the property subject to an existing Lease Agreement between Clear Channel and the seller, CPC Southwest Materials, Inc (the "CPC Lease"). Since the property was acquired by the District, Clear Channel has paid to the District all rents due and owing under the CPC Lease. Rather than having Clear Channel continue to occupy the property under the terms and conditions of the CPC Lease, Clear Channel and the District have agreed to the terms of a new lease.

**Procurement Method:**

Exempt pursuant to Pima County Code 11.04.020

**Program Goals/Predicted Outcomes:**

The lease will generate rental income and will terminate by November 15, 2020 pursuant to the terms of a consent decree between Clear Channel Outdoor, Inc. and the City of Tucson.

**Public Benefit:**

The District will continue to receive market value rental income, and the terms and conditions of the lease are preferable to the existing holdover lease.

**Metrics Available to Measure Performance:**

This is a revenue contract with monthly lease payments of \$775.00, or \$9,300 annually. The lease rate is based on a market rent analysis.

**Retroactive:**

No

APR 08 16 PM 03:43 PCD/KDF/PP

To: CoB- 4-8-16 (2)

Ver.-1

Pgs.- 11 Addendum

Procure Dept 04/08/16 PM 11:26

**Original Information**

Document Type: CTN Department Code: PW Contract Number (i.e., 15-123): 16\*0141  
Effective Date: 04/19/2016 Termination Date: 11/15/2020 Prior Contract Number (Synergen/CMS): \_\_\_\_\_  
☐ Expense Amount: \$ \_\_\_\_\_ ☒ Revenue Amount: \$ 9,300.00 annually  
Funding Source(s): Flood Control Districts/General Fund

Cost to Pima County General Fund: None

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards  
Were insurance or indemnity clauses modified? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards  
Vendor is using a Social Security Number? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards  
If Yes, attach the required form per Administrative Procedure 22-73.

**Amendment Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_  
Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_  
Effective Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_  
☐ Expense ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$ \_\_\_\_\_  
Funding Source(s): \_\_\_\_\_

Cost to Pima County General Fund: \_\_\_\_\_

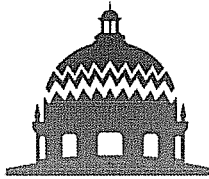
Contact: Rita Leon  
Department: Real Property Services Telephone: 724-6462  
Department Director Signature/Date: [Signature] 3/30/16  
Deputy County Administrator Signature/Date: [Signature] 4/5/16  
County Administrator Signature/Date: [Signature] 4/16/16  
(Required for Board Agenda/Addendum Items)

CONTRACT

NO. CTN-PW-16-141

AMENDMENT NO. \_\_\_\_\_

This number must appear on all  
invoices, correspondence and  
documents pertaining to this  
contract.



**PIMA COUNTY**  
**REAL PROPERTY**

**LANDLORD:** Pima County Regional Flood Control District

**TENANT:** Clear Channel Outdoor, Inc.

**REVENUE CONTRACT**

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**LEASE AGREEMENT**

**1. Parties.** This Lease ("Lease") is made and entered into by and between **Clear Channel Outdoor, Inc.**, a Delaware Corporation hereinafter called the "Tenant," and the **Pima County Regional Flood Control District**, a special taxing district of the State of Arizona, hereinafter called the "Landlord" or the "District." This Lease shall be effective (the "Effective Date") on the date it is signed by the Chair of the Board of Directors of the District. Landlord and Tenant are collectively referred to as the "Parties."

**2. Background and Purpose.**

**2.1.** Landlord is the owner of that certain parcel of real property located in Pima County, Arizona; more particularly described in Exhibit "A" attached (the "Premises"). Landlord purchased the property containing the Premises in 2012.

**2.2.** At the time of Landlord's purchase of the property, Tenant's outdoor advertising structure (the "Billboard") was physically present on the Premises pursuant to that certain Lease Agreement, dated December 1, 2004 (as it may have been amended, the "CPC Lease") between Tenant and CPC Southwest Materials, Inc., as successor to Tucson Ready-Mix, Inc. The Billboard is subject to a consent judgment between Tenant and the City of Tucson, Arizona, which judgment requires Tenant to remove the Billboard from the Premises by November 15, 2020 (the "Removal Date").

**2.3.** Landlord and Tenant hereby acknowledge and agree that, as of the Effective Date, there are no breaches by Tenant under the CPC Lease and that Tenant has paid all rents due and owing under the CPC Lease through the end of the month in which the Effective Date occurs.

3. **Premises.** Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, under the terms and conditions and for the purposes set forth in this Lease. This Lease shall amend, restate and replace in its entirety the CPC Lease.

4. **Term.** This Lease shall commence on the Effective Date and shall expire on the Removal Date, unless terminated earlier in accordance with the terms of this Lease.

5. **Rent.** Tenant will pay to Landlord rent in the amount of Seven Hundred Seventy-five Dollars (\$775.00) per month, due on or before the first day of each month. If rent is not paid on or before ten (10) calendar days after the due date, a Fifty Dollar (\$50.00) late charge will be assessed each month until paid in full.

6. **Tenant's Use of the Premises.**

6.1. Permitted Use. Tenant may use the Premises solely for the purpose of operating, maintaining, improving, supplementing, posting, painting, illuminating, repairing or removing the Billboard, including without limitation, such fixture connections, electrical supplies and connections, panels, signs, copy or any similar equipment and accessories as Tenant may place thereon (collectively the "Permitted Uses").

6.2. Access. Tenant is hereby granted 24 hour access to the Premises across Landlord's property as designated on Exhibit "A" (the "Designated Access").

6.3. Expense of Tenant. Tenant will conduct all of its operations at the Premises at its own expense and without contribution from Landlord.

6.4. Hours of Operation. Tenant may conduct the Permitted Uses on the Premises twenty-four (24) hours per day.

6.5. Compliance with Laws. Tenant will comply with all applicable federal, state, and local laws, statutes, ordinances, rules, regulations, and executive orders with respect to the Permitted Uses.

7. Alcohol Prohibited. Without exception, possession, consumption, or sale of alcoholic beverages are not permitted on the Premises, provided that Tenant shall not be restricted from advertising alcoholic beverages on the Billboard.

8. **Condition of Premises; Maintenance & Repairs; Removal**

8.1. As Is. Tenant accepts the Premises in an "as is" condition.

8.2. Maintenance. Tenant will maintain the Billboard all times hereunder in a good, clean, safe and sanitary condition, at its sole cost and expense, and, upon the expiration or earlier termination of this Lease, will repair any damage to the Premises caused by Tenant.

8.3. Ownership/Removal of Billboard. Subject to the provisions of section 13.4 below, the Billboard and any permits acquired by Tenant in connection with the operation thereof, shall remain the property of Tenant. Tenant, at Tenant's sole expense, may at any time, and shall

within one hundred twenty (120) days after the earlier of the Removal Date or earlier termination of this Lease, remove those portions of the Billboard that are above grade. Landlord shall and hereby does grant to Tenant permission to enter the Premises across the Designated Access for such purpose. If required, this Lease shall constitute Landlord's authorization to remove the Billboard and Landlord hereby agrees to execute any documents reasonably requested in connection with such removal upon the request of Tenant.

9. **Improvements to Premises.** Tenant may make no improvements to the Premises without the prior written approval of Landlord, which shall be at Landlord's sole discretion, provided that Tenant shall not be required to obtain Landlord's approval prior to any repairs or maintenance, including, but not limited to, the repairs and maintenance required by Section 8.2.

10. **Utilities.** Tenant will pay the cost of all utilities used in connection with its use of the Premises.

11. **Environmental.** Tenant will not cause any hazardous or toxic substance or material to be brought upon, kept, or used in or about the Premises in violation of any applicable law by Tenant, its agents, employees, contractors or invitees. Tenant will fully comply with all environmental rules and regulations with respect to its use of the Premises and will remediate and clean up any contamination of the Premises caused by Tenant during the term of this Lease.

12. **Entry by Landlord.** Landlord may enter the Premises at reasonable times to inspect the Premises, the Billboard and Tenant's operations thereon, provided that Landlord shall not interfere with Tenant's use of the Billboard or attempt to climb on the Billboard.

13. **Default/Termination.**

13.1. Tenant Default. The occurrence of any one or more of the following events will constitute a default and breach of this Lease by Tenant for which Landlord may terminate this Lease:

13.1.1. *Operation of Premises.* The vacating or abandonment of the Premises, or cessation of activities thereon, or any portion thereof, by Tenant, that continues for a period of ten (10) calendar days after notice of such default is sent by Landlord to Tenant. The failure to post an advertisement shall not be considered an abandonment unless a display face on the Billboard carries no advertisement or other message for more than one year. Any provision herein the contrary notwithstanding, a removal of the Billboard prior to termination in accordance with Section 8.3 shall not constitute vacating or abandonment of the Premises.

13.1.2. *Monetary Obligations.* The failure by Tenant to make any payment required to be made by Tenant under this Lease, as and when due, that continues for a period of ten (10) calendar days after notice from Landlord that such payment is due.

13.1.3. *Insurance.* The failure by Tenant to maintain insurance policies as set forth above for any period of time, in which event neither Tenant nor any agent of Tenant may enter the Premises until such insurance is obtained. In the event of such a default, Landlord may, in Landlord's sole discretion, obtain necessary insurance coverage in which event Tenant must,

within five (5) days of demand, reimburse and pay to Landlord the full amount of any costs and premiums expended by Landlord to obtain such coverage.

13.1.4. *Violation of Law.* Violation of any law by Tenant, or the conduct of any unlawful activities on the Premises that are permitted by Tenant, either tacitly or explicitly, or that Tenant has not taken reasonable means to prevent after Tenant becomes or in the exercise of reasonable diligence should have become aware that such activities are being conducted.

13.1.5. *Health and Safety Violation.* Any action or omission by Tenant on the Premises that, in Landlord's reasonable judgment, causes a threat to the health or safety of the general public or the users of the Premises or neighboring properties.

13.1.6. *Other Covenants.* The failure by Tenant to observe or perform any other of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant that continues for a period of thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant will not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

13.2. Landlord Default. Landlord will be deemed to be in default hereunder if Landlord fails to perform any covenant or condition of this Lease to be performed by Landlord and such failure continues for thirty (30) days after written notice and demand from Tenant, unless the failure is of such a character as to require more than thirty (30) days to cure, in which event Landlord will be in default only if it fails to initiate the cure within thirty (30) days, and thereafter diligently pursue the same to completion.

13.3. Interference with Operation. In the event that one or more of the following events occur: (a) the view of the Billboard's advertising messages becomes entirely or partially obstructed by an object or vegetation not on the Premises, or any neighboring property owned or controlled by Landlord; (b) electrical service to the Premises becomes unavailable or Tenant is prevented from illuminating the Billboard; (c) the Premises cannot safely be used for the erection or maintenance of the Billboard; (d) there is a permanent diversion or permanent reduction in the flow of traffic on or from any street or highway leading to or past the Premises; (e) Tenant is unable to obtain or maintain any necessary permit for the construction, use and/or maintenance of the Billboard; (f) the Billboard's use is otherwise prevented or restricted by law; (g) the Billboard's value for advertising purposes is diminished; or if, for any reason (other than a breach of this Lease by Tenant), the Billboard is removed, materially damaged or destroyed, then Tenant, as its sole remedy, may terminate this Lease upon thirty (30) days written notice to Landlord whereupon Landlord shall refund any unearned portion of prepaid rent, if any.

13.4. Cure by Landlord. Should Tenant fail to perform in a timely manner any of the covenants or terms of this Lease on its part to be performed, Landlord may (but is not obligated to) perform the same and charge Tenant for the costs thereof, together with interest thereon, at the greater of (i) ten percent (10%) per annum, or (ii) the rate set by statute for interest on judgments, from the date upon which the expense is incurred until paid by Tenant. In addition to

the foregoing, in the event Tenant fails to comply with section 8.3 above, Landlord may dispose of the Billboard in any manner it desires.

14. **Condemnation.** If the Billboard or the Premises, or any part thereof, is condemned by proper authorities; taken without the exercise of eminent domain, whether permanently or temporarily: (i) Tenant may terminate this Lease upon not less than thirty (30) days' notice and to receive all prepaid rent for any unexpired term of this Lease; and (ii) Tenant and Landlord may seek compensation to the extent of their respective interests as provided by law.

15. **Insurance.**

15.1. Types of Insurance Required. Tenant will procure, prior to the Effective Date, and maintain throughout the term of this Lease, the following insurance from an insurance company or companies reasonably approved by Landlord:

15.1.1. Commercial General Liability insurance with coverage at least as broad as ISO form CG 00 01 in an amount not less than \$1,000,000, covering Tenant's operations on the Premises.

15.1.2. Automobile liability insurance covering all vehicles used on the Premises, with limits not less than \$1,000,000 combined single limit.

15.1.3. If required by state statute having jurisdiction of Tenant's employees engaged in the performance of the work or services under this contract; Workers' Compensation insurance to cover obligations imposed; and Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

15.2. Waiver of Subrogation. The Policy shall contain a waiver of transfer of rights of recovery (subrogation) against Landlord, its agents, representatives, officers, directors, officials and employees for any claims arising out of Tenant's work or service.

15.3. Waiver by Tenant. Tenant waives all rights against Landlord and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Tenant pursuant to this Lease.

15.4. Certificates. Tenant will provide Landlord with copies of certificates of insurance showing the current status of all insurance policies. All certificates of insurance must provide for a guaranteed thirty (30) days written notice of cancellation, non-renewal, or material change. Any modifying language in a certificate of insurance must be deleted. All required liability insurance policies above will be endorsed to include Landlord as an additional insured with coverage at least as broad as ISO form CG 20 10.

15.5. Changes to Insurance Requirements. Landlord may reasonably review the coverage, form, and amount of insurance required hereunder at any time. Landlord will notify

Tenant in writing of any changes to the aforesaid insurance requirements, and Tenant will have sixty (60) days to comply with the requirements as changed.

16. **Indemnification.** To the fullest extent permitted by law, Tenant will defend, indemnify, and hold harmless Landlord, its officers, agents, and employees, from and against any and all claims, liabilities, losses, damage, cost and expense, including but not limited to reasonable attorney's fees and/or litigation expenses, arising out of or resulting from the Tenant's use of the Premises, or any accident, injury, damage, or violation of law whatsoever occurring in or at the Premises and caused in whole or in part by any act or omission of Tenant or anyone directly or indirectly employed by it, its agents, representatives, contractors, subcontractors, licensees, or anyone for whose acts it may be liable, except to the extent caused by the act or omission of Landlord or any of its officers, agents, contractors, tenants, invitees, licensees or employees. To the fullest extent permitted by law, Tenant will also indemnify Landlord against any claim, liability, damage, cost, or expense arising out of Tenant's, its agent's, representative's, contractor's or subcontractor's disposal or release of any hazardous substance, hazardous waste, hazardous materials, or petroleum products or by products on, from or under the Premises during the term of this lease.

17. **Tenant not an Agent of Landlord.** Tenant is not an agent of Landlord for any purpose under this Lease or otherwise. Tenant will control activities on the Premises, and Landlord will not control those activities. Tenant's employees and servants are not under the control of Landlord.

18. **Notices.** Any notices required hereunder will be delivered personally or by certified mail, directed as follows:

If to Tenant:

Clear Channel Outdoor, Inc.  
Attn: Real Estate Dept.  
2325 Camelback Rd., Suite 350  
Phoenix, AZ 85016

With a copy to:

Clear Channel Outdoor, Inc.  
Attn: Legal Dept.  
2325 E. Camelback Rd., Suite 400  
Phoenix, AZ 85016

If to Landlord:

Clerk of the Board of Directors  
Pima County Regional Flood Control District  
130 West Congress  
Tucson, AZ 85701

With a copy to:

Pima County Real Property Services  
Attn: Manager  
201 N. Stone, 6<sup>th</sup> Floor  
Tucson, AZ 85701



19. **Cancellation for Conflict of Interest.** This Lease may be cancelled for conflict of interest pursuant to A.R.S. § 38-511.

20. **Non-Discrimination.** Tenant agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09, including flow down of all provisions and requirements to any subcontractors performing work on behalf of Tenant in connection with this Lease. Executive Order 2009-09 supersedes Executive Order 99-4 and amends Executive Order 75-. During the performance of this Lease, Tenant shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

21. **Choice of Law.** The laws of the State of Arizona apply to any action relating to this Lease and any court action must be brought and maintained in a court in Pima County, Arizona.

22. **Liens.** Tenant will timely pay all contractors, subcontractors, mechanics, laborers, or materialmen providing materials or services with respect to the Premises, and will not permit any lien to attach to the Billboard, the Premises or any interest therein, and will indemnify and defend Landlord against all legal costs and charges resulting from any such lien.

23. **Non-Waiver.** The failure of either party to insist in any one or more instances upon the full and complete performance of any of the terms and provisions of this Lease to be performed by the other party, or to take any action permitted as a result thereof, will not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either party of sums less than may be due and owing to it at any time is not an accord and satisfaction.

24. **Assignment/Subletting.** Tenant may not assign or sublet this Lease without the prior written consent of Landlord, which shall be at its sole discretion, except that Tenant may assign this Lease to an affiliate of Tenant, a successor by merger, or to an entity acquiring all of Tenant's assets in Pima County.

25. **Entire Agreement.** This Lease constitutes the entire contract between Landlord and Tenant with respect to the Premises and no modification hereof is binding unless in writing and signed by both parties.

26. **Attorneys' Fees.** In the event of any litigation or other dispute resolution proceeding between Landlord and Tenant concerning the interpretation or performance of the obligations under this Lease, the losing party shall pay the prevailing party, each as determined by the court, reasonable attorneys' fees and court costs arising from or relating to such dispute.

27. **Obstructions.** Landlord shall not, and shall not permit its agents, employees or other persons acting on Landlord's behalf, to place or maintain any object on the Premises, or any adjacent property owned or controlled by Landlord which would obstruct the view by the public of the Billboard, as reasonably determined by Tenant. If Landlord fails to remove any such obstruction within five (5) days after written notice from Tenant, in addition to Tenant's other

remedies, Tenant may, in its sole discretion, immediately upon notice to Landlord, terminate this Lease and remove the Billboard in accordance with this Lease, whereupon Landlord shall refund any unearned portion of prepaid rent.

**TENANT: Clear Channel Outdoor, Inc., a Delaware Corporation**

By:  \_\_\_\_\_

Date: 3.1.16

Title: PRESIDENT


**LANDLORD: Pima County Regional Flood Control District, a special taxing district of the State of Arizona**

\_\_\_\_\_  
Chair, Board of Directors

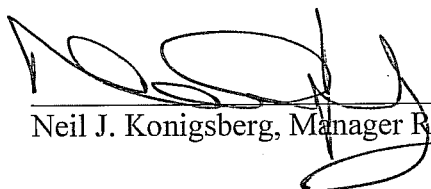
\_\_\_\_\_  
Date

\_\_\_\_\_  
Robin Brigode, Clerk of the Board of Directors

Approved as to Form:

 3/7/16  
Tobin Rosen, Deputy County Attorney

Approved As to Content:

 \_\_\_\_\_  
Neil J. Konigsberg, Manager Real Property Services

A handwritten signature in black ink, appearing to read "S Shields", is positioned above a horizontal line.

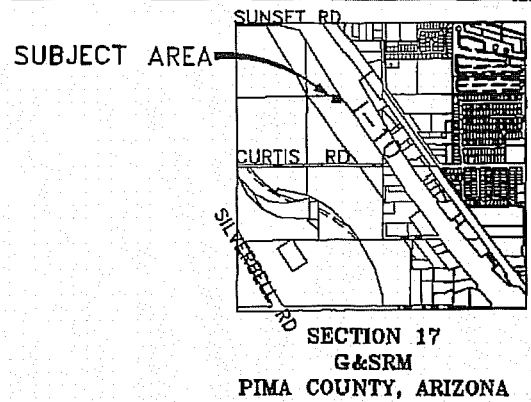
Suzanne Shields, Director  
Pima County Flood Control District

**Exhibit A**

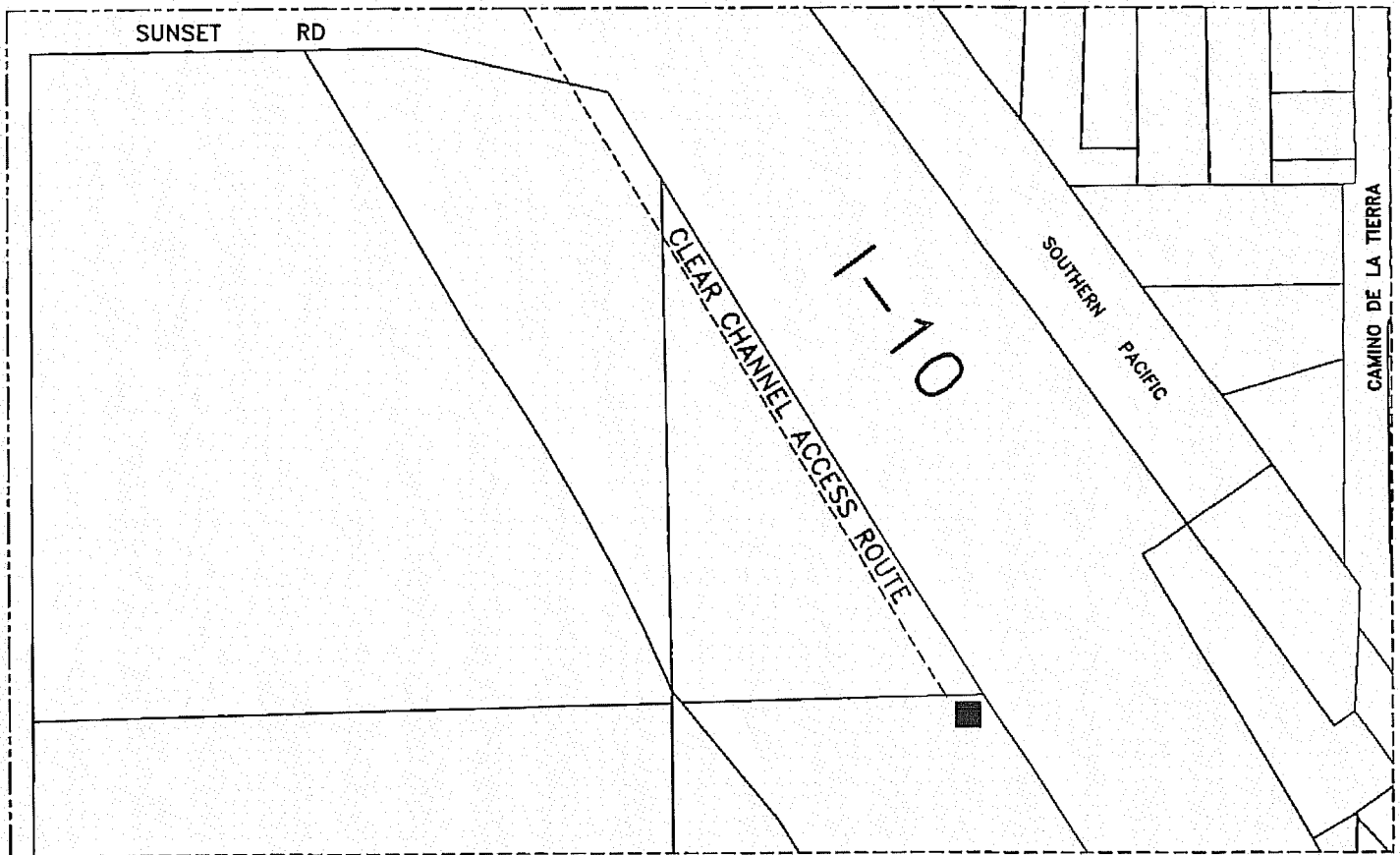
**Parcel Number:** 101-18-006E

**Legal Description:** CTRL PTN SE4 NW4 LYG SW & ADJ FWY 12.97 AC SEC 17-13-13

SECTION 17  
TOWNSHIP 13 SOUTH  
RANGE 13 EAST



DEPICTION OF "EXHIBIT A"



SUBJECT BILLBOARD



PIMA COUNTY DEPARTMENT OF TRANSPORTATION  
TRANSPORTATION SYSTEMS DIVISION

DRAWING NOT TO SCALE

DRAWN BY: L.SAGARNAGA

DATE: AUG 2015