



Contract Number: CT-PW-14X061
Effective Date: 3-11-13
Term Date: 3-10-2023
Cost: \$1,700.00
Revenue: _____
Total: _____ NTE: _____
Action: _____
Renewal By: 12-1-2022
Term: 3-10-2023
Reviewed by: PL

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: 9/3/13

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

1) State Land Department Right of Way Lease

This is a renewal of State Lease #18-52101 for an access road across State land which Pima County Wastewater utilizes for ingress/egress to an existing monitor well located in Section 36, Township 14 South, Range 11 East. This renewal authorizes the continued use of this access road for an additional 10 year period. The new Lease term shall commence retroactively on March 11, 2013 and shall expire on March 10, 2023.

This renewal has been reviewed and approved by appropriate County staff.

Cost to Pima County: \$1,700.00

STAFF RECOMMENDATION(S): It is recommended that the Pima County Board of Supervisors approve and authorize the Chairman to execute the Lease Agreement to the State of Arizona which will allow Pima County Wastewater continued use of the access road across State land.

Ver. 1
Vendor 1
pgs. 10

To: COB - 8.21.13
Agenda - 9.3.13
(2)

Procure Dept 08/14/13 PM 4:44

PIMA COUNTY COST: \$1,700.00 and/or REVENUE TO PIMA COUNTY: \$ _____

FUNDING SOURCE(S): _____
(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: Pima County will acquire a lease from the Arizona State Land Department as required to continue using the access road for the monitoring of the well.

IF DENIED: Pima County will be required to obtain another access to access and maintain the monitor well.

DEPARTMENT NAME: Public Works Real Property Services

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

| |
|---|
| CONTRACT |
| NO <u>CT. PW-1400000 00000 000000 61</u> |
| AMENDMENT NO. _____ |
| <small>This number must appear on all invoices, correspondence and documents pertaining to this contract.</small> |

STATE LAND DEPARTMENT STATE OF ARIZONA

Right of Way

R/W No. 18-52101

THIS RIGHT OF WAY ("Right of Way") is entered into by and between the State of Arizona (as "Grantor") by and through the Arizona State Land Department and

PIMA COUNTY

("Grantee"). In consideration of payment and performance by the parties of each of the provisions set forth herein, the parties agree as follows:

EXTENT OF DOCUMENT

"Additional Conditions", "Exhibits", and "Appendixes" are an integral part of this document. In case of a conflict between the printed boiler document and the additional conditions, exhibits, or appendixes, the applicable additional condition, exhibit, or appendix shall be considered the governing document and supersede the printed boiler, but only to the extent necessary to implement the additional condition, exhibit, or appendix, and only if the additional condition, exhibit, or appendix does not conflict with governing state or federal law.

ARTICLE 1 SUBJECT LAND

1.1 Grantor grants to Grantee a Right of Way on, over, through, and across the State lands described in Appendix A attached hereto ("Subject Land").

1.2 Grantee makes use of the Subject Land "as is", and Grantor makes no express or implied warranties as to the physical condition of the Subject Land.

ARTICLE 2 TERM

2.1 The term of this Right of Way commences on March 11, 2013 ("Commencement Date") and expires on March 10, 2023 ("Expiration Date"), unless sooner canceled or terminated as provided herein or as provided by law.

ARTICLE 3
RENT

3.1 Rental is due in advance for the term of this Right of Way document.

3.2 If the Grantee should fail to pay rental when due, or fail to keep the covenants and agreements herein set forth, the Commissioner, at his option, may cancel said Right of Way or declare the same forfeited in the manner provided by law.

3.3 There shall be added to the delinquent rental or other monies due, a penalty and delinquent interest. The delinquent interest rate shall be set by the State Treasurer according to law. The penalty shall be the greater of a minimum processing cost as determined by the Commissioner or five (5%) percent. The delinquent rent, penalty and interest shall be a lien on the improvements and property on the land.

ARTICLE 4
PURPOSE AND USE OF SUBJECT LAND

4.1 The purpose of this Right of Way is the location, construction, operation, and maintenance of:

non-exclusive access road to monitor well.

4.2 No material may be removed by Grantee or its contractors without the written approval of the Commissioner.

4.3 Grantee shall not exclude from use the State of Arizona, its lessees or grantees, or the general public the right of ingress and egress over this Right of Way.

4.4 Grantee shall acquire required permits prior to construction, and adhere to all applicable rules, regulations, ordinances, and building codes as promulgated by the local jurisdiction and any applicable State or Federal agencies.

4.5 All use of State land outside the Right of Way must be applied for and authorized in accordance with applicable law.

4.6 Grantee shall not sublet or assign this Right of Way or any portion thereof without the written consent of the Grantor.

4.7 The Grantor retains ownership of the Subject Land. The use of this Right of Way is to be non-exclusive. This Right of Way is sold subject to existing reservations, easements, or rights of way heretofore legally obtained and now in full force and effect.

4.8 When necessary for Grantee's reasonable use of this Right of Way for the purposes for which the grant is made, it shall be deemed to include the rights in, upon, over, and across the described Subject Land to erect, construct, reconstruct, replace, repair, and maintain the facilities authorized by this Right of Way.

4.9 Grantee shall have the right to erect, maintain, and use gates in all fences under the control of the Grantor which now cross or shall hereafter cross said Right of Way, and to trim, cut, and clear away trees or brush whenever in its judgment the same shall be necessary for the convenient and safe exercise of the right herein provided.

4.10 Grantee shall not fence any portion of this Right of Way unless specifically authorized in the attached additional conditions without prior written consent of Grantor, nor shall Grantee exclude from the use of the surface thereof the State of Arizona or its lessees or grantees as reserved in Paragraph 10.1.

ARTICLE 5 **CONFORMITY TO LAW**

5.1 This Right of Way is subject to applicable laws and covenants relating to State lands.

ARTICLE 6 **CANCELLATION, TERMINATION AND ABANDONMENT**

6.1 This Right of Way is subject to cancellation pursuant to A.R.S. § 38-511.

6.2 If at any time the Right of Way ceases to be used for the purpose for which it was granted, it shall become void, and the right to use the Subject Land and all the rights of Grantee hereunder shall revert to the Grantor.

6.3 Upon revocation or termination of the Right of Way, the Grantee shall remove all equipment or facilities and, so far as is reasonably possible, restore and/or rehabilitate the Subject Land to its original condition, and to the satisfaction of the Commissioner.

ARTICLE 7 **INDEMNITY**

7.1 This provision is pursuant to the July 12, 2000 memorandum issued by the Risk Management Section of the Arizona Department of Administration applicable to all political subdivisions of the State.

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 attorneys' 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 fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

ARTICLE 8
RESERVATIONS; RELINQUISHMENTS

8.1 Grantor reserves the right to grant other rights in, upon, over, and across the described Subject Land for any purpose whatsoever not inconsistent or incompatible with the use allowed by this indenture, and the Grantee agrees not to exclude the Grantor or its lessees or grantees from the use of the Subject Land herein described.

8.2 Grantor reserves all natural resources, timber, and minerals (including oil or gas) in or upon the described Subject Land, and the right to grant leases, permits, easements, and/or rights of way to extract such resources as provided by law and in a manner not inconsistent or incompatible with Grantee rights hereunder. Where inconsistent or incompatible uses exist, the Grantor will require the applicant therefor to indemnify Grantee for loss it might suffer by reason of such use.

8.3 Grantor reserves the right to relinquish to the United States pursuant to the U.S. Act of August 30, 1890, land needed for irrigation works in connection with a government reclamation project.

ARTICLE 9
LOCATION, CONSTRUCTION AND MAINTENANCE

9.1 Grantee shall ensure full compliance with the terms and conditions of this Right of Way by its agents, employees, and contractors (including sub-contractors of any tier), and the employees of each of them and shall include the terms and conditions in all contracts and sub-contracts which are entered into by any of them.

9.2 Failure or refusal of Grantee's agents, employees, contractors, sub-contractors, or their employees to comply with these terms and conditions shall be deemed to be the failure or refusal of Grantee.

ARTICLE 10
NATIVE PLANTS AND CULTURAL RESOURCES

10.1 (a) Pursuant to A.R.S. §§ 41-841 and 41-842, Grantee, Grantee's employees, and Grantee's guests shall not excavate or collect any prehistoric or historic archaeological specimens on the Subject Land without a permit from the Director of the Arizona State Museum and written approval of Grantor pursuant to the terms of this Right of Way. Grantee shall immediately report any unpermitted excavation or collection of archaeological specimens on the Subject Land to the Arizona State Museum and Grantor.

(b) Pursuant to A.R.S. § 41-844, Grantee shall report to the Director of the Arizona State Museum and Grantor any prehistoric or historic archaeological site, or paleontological site, that is discovered on the Subject Land by Grantee, Grantee's employees, or Grantee's guests, and shall, in consultation with the Director of the Arizona State Museum and Grantor, immediately take all reasonable steps to secure the preservation of the discovery.

10.2 (a) Grantee shall not move, use, destroy, cut or remove or permit to be moved, used, destroyed, cut or removed any timber, cactus, native plants, standing trees or products of the land except that which is necessary for the use of the Subject Land, and then only with the prior written approval of Grantor. For undeveloped land, the Grantee must submit a plant survey prior to the removal of any native plant. If the removal or destruction of plants protected under the Arizona Native Plant Law (A.R.S. § 3-901 *et seq.*, or any successor statutes) is necessary to the use of the Subject Land, Grantee shall also obtain the prior written approval of the Arizona Department of Agriculture. In the event the Grantee removes the native plants, the Grantee must pay a vegetation fee to the Grantor and this fee is not a reimbursable improvement.

(b) Grantee is responsible for treatment of all regulated and restricted noxious weeds listed by the Arizona Department of Agriculture.

ARTICLE 11

GRANTEE SHALL PROTECT AND RESTORE THE SUBJECT LAND

11.1 Grantee shall be required, upon completion of Right of Way construction, to make such rehabilitation measures on the State lands, including but not limited to restoration of the surface, revegetation, and fencing as determined necessary by the Grantor.

11.2 Grantee shall conduct all construction and maintenance activities in a manner that will minimize disturbance to all land values including, but not limited to vegetation, drainage channels, and streambanks. Construction methods shall be designed to prevent degradation of soil conditions in areas where such degradation would result in detrimental erosion or subsidence. Grantee shall take such other soil and resource conservation and protection measures on the Subject Land under grant as determined necessary by the Grantor.

11.3 Costs incurred by the Grantee in complying with restoration and rehabilitation requirements, as determined by the Department, on State lands shall be borne by the Grantee.

11.4 Grantee shall conduct its operations on the Subject Land in such a manner as is consistent with good environmental practices. Grantee shall exert reasonable efforts to avoid damage of protected flora, and restore the surface to its condition prior to the occupancy thereof by Grantee.

ARTICLE 12
MISCELLANEOUS

12.1 The described Subject Land shall be used only for the purpose stated in Paragraph 4.1, and as may be further detailed elsewhere in this document.

12.2 This Document is submitted for examination and shall have no binding effect on the parties unless and until executed by the Grantor (after execution by the Grantee), and until a fully executed copy is delivered to the Grantee.

12.3 In the event of a dispute between the parties to this Right of Way, it is agreed to use arbitration to resolve the dispute, but only to the extent required by A.R.S. § 12-1518. In no event shall arbitration be employed to resolve a dispute which is otherwise subject to administrative review by the Department.

12.4 Insurance provisions are intentionally omitted from this Permit pursuant to the July 12, 2000 memorandum issued by the Risk Management Section of the Arizona Department of Administration to all political subdivisions of the State.

12.5 The Grantor does not represent or warrant that access exists over other State lands which intervene respectively between the above Right of Way and the nearest public roadway.

12.6 If for any reason the State of Arizona does not have title to any of the Subject Land described herein, this Right of Way shall be null and void insofar as it relates to the land to which the State has failed to receive title.

12.7 Every obligation of the State under this Right of Way is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Right of Way, this Right of Way may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or any damages as a result of termination under this paragraph.

12.8 The parties agree to be bound by applicable State and Federal rules governing Equal Employment Opportunity, Non-discrimination and Disabilities, including Executive Order No. 2009-09.

12.9 Within 30 days of project completion, Grantee shall submit a completed certificate of construction (copy attached).

APPENDIX A

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

RUN DATE: 26 June 2013
RUN TIME: 23:04 PM
PAGE: 1

KE-LEASE# 018-052101-00-001 APPTYPE: RENEWAL
AMENDMENT#: 0

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| LAND# | LEGAL DESCRIPTION | AUS | ACREAGE |
|------------------------------|-------------------|------|---------|
| 14.0-S-11.0-E-36-10-030-9003 | M&B THRU S2SWSE | 0.00 | 0.720 |
| | TOTALS | 0.00 | 0.720 |

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

STATE OF ARIZONA, GRANTOR
Arizona State Land Commissioner

See Attached

GRANTEE

By: _____
Date

Authorized Signature Date

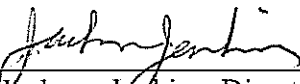
(SEAL)

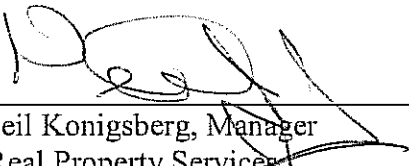
Title

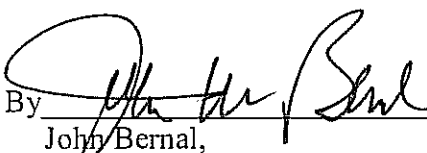
Address

City State Zip

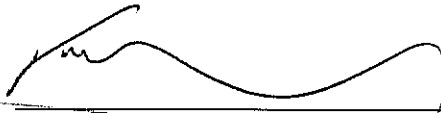
Recommended to the Board of
Supervisors for Approval:

By 
Jackson Jenkins, Director
Regional Wastewater Reclamation

By 
Neil Konigsberg, Manager
Real Property Services

By 
John Bernal,
Deputy County Administrator-Public Works

Approved as to form:


Tobin Rosen, Deputy County Attorney

Approved and accepted by Pima County:

Chairman, Pima County Board of
Supervisors

Attest:

Robin Brigode, Clerk of the Board of Supervisors

GRANTEE'S CERTIFICATE OF CONSTRUCTION

RIGHT OF WAY NUMBER: _____

NAME OF GRANTEE: _____

DATE ISSUED: _____

PERMITTED USE: _____

LAND DEPARTMENT ADMINISTRATOR: _____

DATE CONSTRUCTION STARTED: _____

DATE CONSTRUCTION COMPLETED: _____

I hereby certify that the facilities authorized by the State Land Commissioner, were actually constructed and tested in accordance with the terms of the grant, in compliance with any required plans and specifications, and applicable Federal and State laws and regulations.

Grantee's Signature

Date

Title _____

**Return To: Arizona State Land Department
R/W Section
1616 W. Adams Street
Phoenix, AZ 85007**