



BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 07/25/2023

* = Mandatory, information must be provided

or Procurement Director Award: ☐

***Contractor/Vendor Name/Grantor (DBA):**

Thim Utility Corporation, an Arizona corporation

***Project Title/Description:**

Pima County License License Non-Exclusive Right-of-Way Use License for Public Utility Facilities

***Purpose:**

Pima County to grant a Public Utility License to operate water facilities within public rights-of-way as shown on attached Location Map.(LIC-0234)

***Procurement Method:**

Exempt pursuant to Pima County Code 11.04.020

***Program Goals/Predicted Outcomes:**

Thim Utility Corporation will have the privilege to install, maintain, and operate water facilities within the public rights-of-ways within Pima County and outside the confines of any incorporated city or town as required by A.R.S. 40-283.

***Public Benefit:**

Thim Utility Corporation may apply for and obtain permits from Pima County Development Services for activities related to installation, maintenance and operation of water facilities within public rights-of-way.

***Metrics Available to Measure Performance:**

Thim Utility Corporation will have the rights to operate facilities in the County rights-of-way according to standards and provisions set forth in the Public Utility License Agreement

***Retroactive:**

No.

Location Map- attached

TO: COB 7-10-23 (2)
Vers.: 1
pgs.: 9

JUL 10 23 PM 10:50 PD

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: CTN Department Code: RPS Contract Number (i.e., 15-123): 23*0204
Commencement Date: 7/25/2023 Termination Date: 7/24/2048 Prior Contract Number (Synergen/CMS): _____
☐ Expense Amount \$ _____ * ☒ Revenue Amount: \$ 0.00

***Funding Source(s) required: N/A**

Funding from General Fund? ☐ Yes ☒ No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No

If Yes, is the Contract to a vendor or subrecipient? _____

Were insurance or indemnity clauses modified? ☐ Yes ☒ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
Amendment No.: _____ AMS Version No.: _____
Commencement Date: _____ New Termination Date: _____
Prior Contract No. (Synergen/CMS): _____

☐ Expense ☐ Revenue ☐ Increase ☐ Decrease

Amount This Amendment: \$ _____

Is there revenue included? ☐ Yes ☐ No If Yes \$ _____

***Funding Source(s) required: _____**

Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards)

☐ Award ☐ Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____
Commencement Date: _____ Termination Date: _____ Amendment Number: _____
☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____

***All Funding Source(s) required: _____**

*Match funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

*Match funding from other sources? ☐ Yes ☐ No If Yes \$ _____ % _____

*Funding Source: _____

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Aaron Mergenthal

Department: Real Property Services

Telephone: 724-6307

Department Director Signature: _____

Date: 6/29/2023

Deputy County Administrator Signature: _____

Date: 7/4/2023

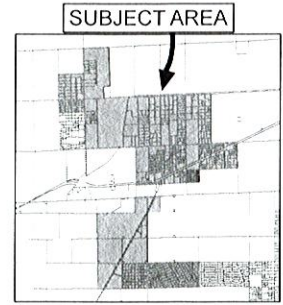
County Administrator Signature: _____

Date: 7/6/2023

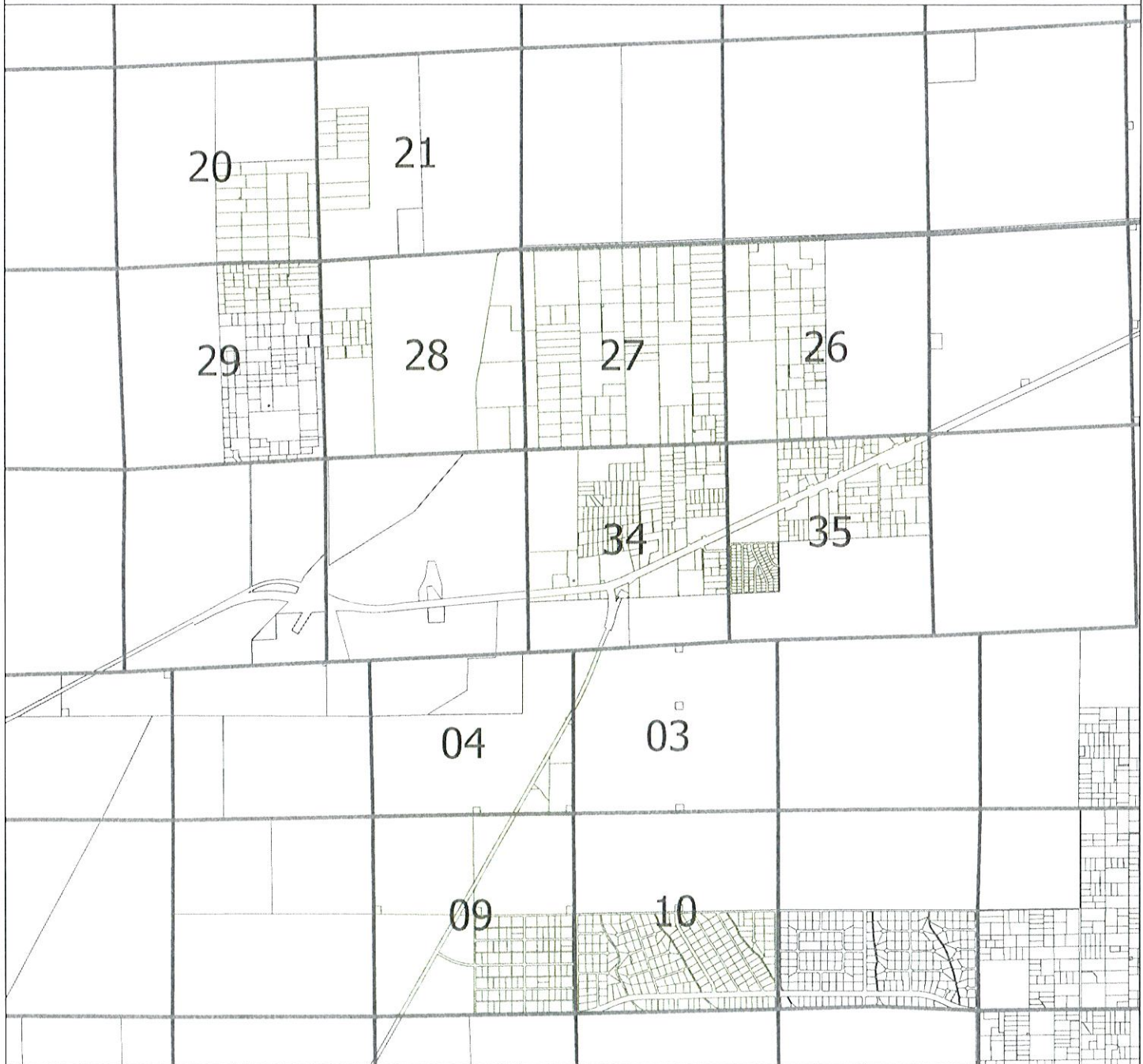
Location Map

SECTIONS 20, 21, 26, 27, 28, 29, 34 & 35
TOWNSHIP 15 SOUTH
RANGE 10 EAST

SECTIONS 3, 4, 9, 10
TOWNSHIP 16 SOUTH
RANGE 10 EAST



MULTIPLE SECTIONS G&SRM
PIMA COUNTY, ARIZONA



23034

PIMA COUNTY DEPARTMENT OF TRANSPORTATION
ENGINEERING INFORMATION MANAGEMENT

DRAWING NOT TO SCALE

DRAWN BY: A GRIFFIN

DATE: APR 2023

LEGEND

 Thim Utility License

For Recorder's Use Only

ADV Contract Number: CTN-RPS-23*0204

PIMA COUNTY

LICENSE

**NON-EXCLUSIVE RIGHT-OF-WAY USE LICENSE
FOR PUBLIC UTILITY FACILITIES**

WHEREAS, pursuant to Arizona Revised Statutes Title 40, Section 283, A.R.S. § 40-283 and A.R.S. § 11-251(4), Thim Utility Corporation, an Arizona corporation, (hereinafter "Licensee") has applied to the Board of Supervisors of Pima County, Arizona, (hereinafter "County") for the right and privilege in the area of the County outside the confines of any incorporated city or town to construct, install, maintain and operate in the public right-of-way facilities and appurtenances for the purpose of water distribution; and

1. Grant of Permission. In consideration of Licensee's agreement to abide by the promises contained herein, County hereby gives permission, revocable and terminable as provided herein, to Licensee to use all County public rights-of-way within Pima County lying outside the confines of any incorporated city or town to construct, install, maintain and operate water distribution facilities, in such public rights-of-way. "Rights-of-way" shall include public streets, roads, and alleys, as described and depicted on Exhibit "A"
2. Term. This License shall run for a period of 25 years from the date that the Pima County Board of Supervisors executes this License. This License may be renewed upon application of Licensee and approval by County. This License may be terminated or revoked by County at any time upon providing written notice to Licensee of such revocation or termination. Upon receipt of written notice from County that this License is terminated or is revoked, Licensee shall remove its property from the right-of-way at no expense to County and to the satisfaction of County within 90 days of the date of mailing of the written notice. Licensee shall restore the right-of-way to the condition

mutually agreed upon.

3. Future regulation. All rights granted by this license are subject to such restrictions and limitations as may be deemed by the Board of Supervisors to be in the best interest of the public safety and welfare.
4. County rights paramount. The rights of County to the use of its public rights-of-way shall be superior at all times to the rights of Licensee under this agreement.
5. Facilities; definition; removal. Nothing in this License shall be construed to prevent County from abandoning, altering, improving, repairing or maintaining facilities of County or the public right-of-way and, for that purpose, requiring Licensee at its own expense to remove, relocate or abandon in place Licensee's facilities to accommodate the activities of County. "Facilities of Licensee" shall mean any physical object or improvement or alteration of a right-of-way owned, possessed, made, installed or constructed by Licensee or made, installed, or constructed by County or others at the request of Licensee. "Facilities of Licensee" shall include, but not be limited to, pipes, pipelines, mains, services, vaults, casings, sleeves, vents, fences, meters, gauges, regulators, valves, conduits, appliances, attachments, appurtenances, poles, wires, cables and other property or equipment used or useful for the purpose for which this License is granted. "Facilities of County" shall mean any physical object or improvement owned, possessed, maintained, installed or constructed by County or others at the request of County, including all highway, transportation, flood control and wastewater facilities of County.
6. County not liable for costs and lost revenues. County shall not be liable to Licensee for (a) any costs of relocation, replacement, repair or abandonment of Licensee's facilities in the public right-of-way, or (b) lost revenues sustained by Licensee because of damage, modification or alteration to or destruction of its facilities in the public right-of-way.
7. No exclusive right. Nothing in this License shall be construed to grant Licensee an exclusive right to erect and maintain its facilities in the public right-of-way. Facilities of Licensee shall be erected so as not to interfere with the reasonable use of the public right-of-way by others. The location of facilities of Licensee shall not be a vested interest and its facilities shall be removed, relocated or abandoned in place by Licensee whenever they restrict or obstruct the use or location, or any future use or location, of the public right-of-way or Facilities of County or the use thereof by the public. County expressly reserves the right to grant, from time to time, similar Licenses and privileges over the same right-of-way.
8. Relocation. Licensee shall relocate at its expense all facilities of Licensee that conflict or interfere with County use, improvement or abandonment of the public right-of-way. The facilities shall be relocated in accordance with the procedures and time limitations set forth in Pima County Code Chapter 10.44, as amended. If the facilities are not relocated in accordance with Pima County Code Chapter 10.44, County may, at its discretion, relocate the facilities utilizing a qualified contractor and Licensee shall be liable for all costs to County of relocation including overhead and maintenance costs.
9. Care and restoration of County roadway or facilities. In the construction, maintenance, repair and operation of its facilities, Licensee shall not alter, in any way, a County highway, roadway, or street. Licensee shall use all necessary care to avoid causing or permitting any damage, disturbance, alteration or modification to the facilities of County. If Licensee causes or permits any damage, disturbance, alteration or modification, Licensee, at its expense and in a manner approved by the

County Engineer, shall restore, to the satisfaction of County, the roadway or facilities to the condition in which they were before being damaged, disturbed, altered or modified and shall also be liable to County or others for any other damages which may accrue because of said damage, disturbance, alteration or modification. The restoration shall be initiated promptly and completed expeditiously in recognition of the duty of Licensee to give the restoration, repair or replacement of County roadway or facilities priority over proceeding with non-emergency activities of Licensee.

10. Vegetation. In the construction, maintenance, repair and operation of its facilities, Licensee shall avoid causing any damage to or disturbance of existing vegetation in the public right-of-way. If Licensee causes or permits any such damage or disturbance, Licensee, at its sole expense and in accordance with all County regulations then in effect, including but not limited to the provisions of Section 18.73.030B(12) of the Zoning Code of County, shall re-vegetate the right-of-way to the satisfaction of the County Engineer.
11. Access to adjoining property. Licensee shall provide prior written or actual notice to the owners or residents of adjoining property of any activity of Licensee which may temporarily interfere with access to or use of said adjoining property. If an emergency precludes the provision of prior notice, Licensee shall use its best efforts to provide timely actual notice to the owners or residents of the adjoining property.
12. Indemnification; hold harmless; defend. All costs associated with the License and any use of public right of way 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, the Licensee shall indemnify, defend and hold the County, its governing board or body, officers, departments, employees and agents, harmless from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or penalties, damages, liability, interest, attorney's, consultant's and accountant's fees or costs and expenses of whatsoever kind and nature, resulting from or arising out of any act or omission of the Licensee, its agents, employees or anyone acting under its direction or control, whether intentional, negligent, grossly negligent, or amounting to a breach of contract, in connection with or incident to the performance of this License. The obligations under this Article shall not extend to the negligence of the County, its agents, or employees. If County is sued in any court by any person, firm, association or corporation to recover damages for injuries or death to person or property on account of the construction, installation, operation, maintenance, repair or replacement of facilities of Licensee, Licensee shall indemnify County, pay any resulting final judgments, and shall at the option of County be made a party to any such court proceeding. This provision shall not bar Licensee from claiming contribution for such injuries, death, damages and defense costs after, and to the extent, County is found liable by a court of competent jurisdiction for such damages, injuries or death by reason of acts or omissions of County or its employees, servants or agents. This indemnity shall survive the termination of this License.
13. Insurance. Licensee shall provide the County with and maintain in full force throughout the term of this License by the Licensee or Licensee's assignees liability insurance. This License shall terminate if insurance lapses. County reserves the right to require additional insurance at County's sole discretion.. The insurance policy should comply as follows:
 - 13.1. Commercial General Liability insurance; including coverage for contractual liability; products and completed operations; and explosion, collapse, and underground; with limits

not less than \$5,000,000, combined single limit.

- 13.2. Commercial Automobile Liability insurance covering owned, non-owned, and hired vehicles used in connection with this license, with limits not less than \$5,000,000.
- 13.3. At least the first \$1,000,000 of Commercial General Liability insurance and Commercial Automobile insurance shall be primary insurance. Excess insurance may be used for amounts exceeding the first \$1,000,000 as long as the coverage "follows form."
- 13.4. The Commercial General Liability insurance and Commercial Automobile insurance policies shall be endorsed to name Pima County as additional insured.
- 13.5. The insurer, broker, or agent shall cause certificates of insurance indicating the required insurance coverage and endorsements, or copies of the insurance policy declaration pages and required endorsements, to be delivered to Pima County Real Property Services. The certificate of insurance shall be reasonably similar to, and contain at least the same information as an ACORD form certificate of insurance. All insurance policies shall include a sixty (60) day notice of cancellation or material change of coverage endorsement. Deductibles or retention levels exceeding \$10,000 per claim shall be declared. Licensee shall immediately forward a copy of any notice of cancellation or material change of coverage to Pima County Real Property Services in addition to any notice provided by the insurer or its representative.
- 13.6. Licensee shall be solely responsible for all premiums, deductibles, or self-insured retentions due and payable for insurance required in this Paragraph.
14. County participation in suit, action or proceeding. County shall have the right at all times to take part in any suit, action or proceeding instituted by or against Licensee (a) in which any judgment or decree can be rendered foreclosing any lien on any of Licensee's property situated within the public right-of-way, (b) seeking to enjoin, restrain, or in any manner interfere with Licensee in the performance or observance by it of any of the terms or conditions of this License, or any regulation, notice or direction of County in such connection, (c) affecting the rights, powers or duties of Licensee to do or not to do anything which by this License it may be required to do or not to do, or (d) which involves or might involve the constitutionality, validity or enforcement of this License. County may take such steps relating to the suit, action or proceeding, as County may deem necessary or advisable to protect the interest of County or the public interest.
15. Location and construction standards. The location and construction of facilities in public right-of-way shall conform to applicable industry standards then in effect and as may be directed by County in order not to interfere with a planned future use of the public right-of-way. All facilities of Licensee shall be located so as to cause minimum interference with the proper use of the public right-of-way and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin the public right-of-way.
16. Barriers and signs. Any opening or obstruction in the public right-of-way made by Licensee in the course of the construction, maintenance, operation, repair, replacement or removal of facilities shall be guarded and protected at all times by the placement of adequate barriers, the bounds of which during periods of dusk and darkness shall be clearly designated by warning lights. Any work performed by Licensee along a public highway open for travel shall be properly signed and marked

with warning and directional devices in accordance with A.R.S. § 28-650 and the "Traffic Control Manual for Highway Construction and Maintenance", Arizona Department of Transportation, August, 1981, as amended now and in the future.

17. Drainage. During construction or excavation in the public right-of-way, Licensee shall provide proper drainage so that the public right-of-way shall be free from standing surface water and properly and adequately drained so as not to cause flood or erosion damage to the facilities of the County or surrounding property.
18. Inspection; charge. County, if it deems necessary, may inspect any of Licensee's activity and/or facilities in the public right-of-way to ensure proper performance of this License and conformance with applicable federal, state and county laws, ordinances and regulations, and County may make a reasonable charge for such inspection, provided such charge is lawfully adopted and uniformly imposed and collected for such inspections from other utilities or persons similarly situated to Licensee.
19. Compliance; assent to legality. Licensee shall conform to and abide by and perform all the conditions, provisions, requirements and limitations in this License. Licensee shall be subject to all County ordinances and regulations now in force or that hereafter may be lawfully adopted, including all ordinances and regulations relating to the use of public right-of-way by utilities. Licensee shall not set up as against County any claim that the provisions of this License or any applicable County ordinance or regulation now lawfully in force are unreasonable, arbitrary or void.
20. 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.
21. Removal of Encroachment; Performance Bond. Nothing in this License shall be construed to prevent County from abandoning, altering, improving, repairing or maintaining facilities of County or the public right-of-way and, for that purpose, requiring Licensee at its own expense to remove, relocate or abandon in place Licensee's facilities to accommodate the activities of County. Upon termination of this License for any reason or in the event partial or total removal of the Encroachment becomes necessary for any purpose, Licensee shall promptly remove the Encroachment at its own cost alone. In this event, Licensee shall not seek compensation or financial reimbursement for costs associated with the removal or relocation of the Encroachment. In the event the Encroachment is not promptly removed by Licensee, County shall have the right to remove the Encroachment. To secure its obligation herewith, Licensee shall provide a performance bond in the amount of \$5,000.00. County shall be entitled to the bond proceeds in the event Licensee fails to promptly remove the Encroachment upon reasonable notice and County removes the Encroachment. The bond shall be maintained throughout the term of this License. If evidence of a renewal of the bond is not provided to County 30 days prior to the bond's expiration, this License shall automatically terminate and the bond shall become payable. This License shall become null and void if the bond lapses. County shall not be liable for lost revenues, sustained by Licensee because of damage, modification or alteration to or destruction of its facilities in the public right-of-way, when such costs or lost revenues result from construction, operation and maintenance of facilities of County in the public right-of-way, provided the activities resulting in such costs or lost revenues are conducted in accordance with applicable laws and regulations.
22. Conflict of Interest. This Agreement is subject to A.R.S. § 38-511 which provides for cancellation of contracts by County for certain conflicts of interest.

23. County permits; no authorization of wrongdoing. This License does not constitute a County permit for right-of-way use. Nothing in this License relieves Licensee from its duty to obtain all applicable permits for right-of-way use from the appropriate County departments and the Pima County Flood Control District. Licensee shall construct the proposed Encroachment in accordance with the plans submitted to the County with the application for this License. County review or approval of plans or specifications or issuance of a permit for an activity or an installation, construction or location of a facility of Licensee, or the failure of County to direct Licensee to take any precautions or make any changes or to refrain from doing anything, shall not be construed to be an authorization for or approval of any violation of an industry standard pertaining to the location or construction of a utility facility in a public right-of-way. No review, approval or permit presuming to give such authority shall relieve Licensee of its obligations under this License regarding the location and construction of facilities. The failure of County to direct Licensee to take any precautions or make any changes or to refrain from doing anything, shall not excuse Licensee from its responsibilities hereunder to County or others for injury to persons or damage to property.
24. Compliance with Highway Safety. Construction of 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. Once constructed, the Encroachment shall be maintained by Licensee so as not to interfere with safe sight distance or safe travel along the right-of-way.
25. Future regulation. All rights hereunder are granted under the express condition that the Board of Supervisors shall have the power at any time, in accordance with applicable law, to impose such restrictions and limitations and to make such regulations as to the physical use of said right-of-way by Licensee as may be deemed best for the public safety or welfare.
26. Headings. Headings used in this License are for convenience only and shall not be used in construing its terms.
27. Waiver. Waiver by County of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

LICENSEE: Dorinda Chacon

By: Dorinda Chacon

Title: Client Relations Manager

State of Arizona)

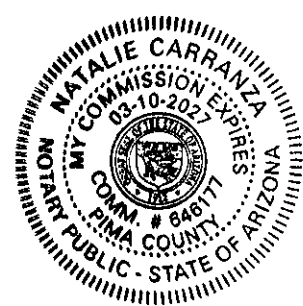
) ss

County of Pima)

This instrument was acknowledged before me the undersigned authority on this 16 day of May 2023, by Natalie Carranza, as Notary of Pima County.

[Signature]
Notary Public

My commission expires:
3-10-27



IN WITNESS WHEREOF, the parties hereto have executed this License as of the date signed by the Board of Supervisors.

LICENSOR: PIMA COUNTY

Chair, Board of Supervisors

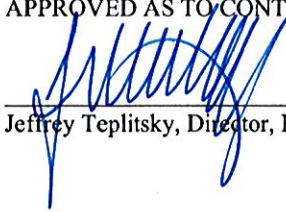
Date: _____

Attest:

Melissa Manriquez, Clerk of the Board

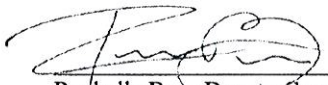
Date: _____

APPROVED AS TO CONTENT:



Jeffrey Teplitsky, Director, Real Property Services

APPROVED AS TO FORM:



Rachelle Barr, Deputy County Attorney

06/19/2023

EXHIBIT "A"
Legal Description

In Township 15 South, Range 10 East, G. & S.R.M.:

The Southeast Quarter of Section 20;

The West Half of Section 21, EXCEPT the East Half of the Southeast Quarter of the Southwest Quarter thereof;

The West Half of Section 26;

All of Sections 27 and 28;

The North Half of the Northeast Quarter of Section 29;

The North Half of Section 34 and the North Half of the South Half of Section 34;

The North Half of Section 35 and the Northwest Quarter of the Southwest Quarter of Section 35;

In Township 15 South, Range 10 East, G. & S.R.M.:

Lots 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of Section 3;

All of Section 4, EXCEPT Lots 2, 3, and 4 thereof;

All of Section 9;

The South Half of Section 10;

All in Pima County, Arizona.

SLW:dh
Thin. EX B

9942 518

A