



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

Requested Board Meeting Date: March 21, 2017

or Procurement Director Award

Contractor/Vendor Name (DBA): Marana Unified School District ("MUSD")

Project Title/Description:

Lease Purchase Agreement ("Agreement") for Geasa-Marana Library Building, 13370 N. Lon Adams Road, Marana, Arizona between Pima County ("Owner") and MUSD.

Purpose:

This Agreement allows for MUSD to lease and purchase the property and improvements ("Property") at 13370 N. Lon Adams Road, Marana Arizona from Owner. Owner will continue to have exclusive use of the Tower and Equipment Room.

Procurement Method:

D 29.4.XI.H "Other Non-Procurement Method" per A.R.S § 11-251(9)

Program Goals/Predicted Outcomes:

To Allow MUSD to lease and purchase the Property at 13370 N. Lon Adams Road, Marana Arizona over a period of ten years

Public Benefit:

To enhance School District's ability to provide services to the public

Metrics Available to Measure Performance:

Timely receipt of 10 annual rent payments for the Property until the expiration of the Agreement; maintaining Property in good repair, except for Owner's obligation to maintain tower and equipment room, successfully fulfilling terms of the Agreement

Retroactive:

No

To: CoB- 3-7-17- (3)
Ver. - 1
Jgs - 21

Procure Dept 03/07/17 AM 10:24

Original Information

Document Type: CTN Department Code: FM Contract Number (i.e.,15-123): 17-172

Effective Date: 3-21/2017 Termination Date: 03/31/2027 Prior Contract Number (Synergen/CMS): _____

Expense Amount: \$ _____ Revenue Amount: \$ 459,500.00

Funding Source(s): _____

Cost to Pima County General Fund: _____

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: Nina Armstrong

Department: Facilities Management Telephone: 520-724-2725

Department Director Signature/Date: [Signature] 3/6/17

Deputy County Administrator Signature/Date: [Signature] 3-6-17

County Administrator Signature/Date: [Signature] 3/6/17
(Required for Board Agenda/Addendum Items)

LEASE PURCHASE AGREEMENT

Geasa-Marana Library Building, Marana, Arizona

This Lease Purchase Agreement (this "Agreement") is entered into effective as of March 21, 2017 (the "Effective Date"), by and between Pima County ("Owner"), and Marana Unified School District ("Tenant" or "MUSD"). Owner and Tenant are referred to collectively in this Agreement as the "Parties".

Recitals

A. Owner is the owner of an improved parcel of real property, approximately 2.5 acres in size, with a street address of 13370 N. Lon Adams Road, in Marana, Arizona, which is legally described on Exhibit A attached to this Agreement (the "Property").

B. The Property includes a building (the "Building"), which currently houses a Pima County library branch, and associated parking lots and driveways (together, the "Improvements"), as shown on Exhibit B.

C. Tenant is a school district, and has requested that Owner lease the Property to Tenant.

D. Owner has the authority, under A.R.S. § 11-251(9), with the unanimous consent of the Board of Supervisors, to sell or lease any county property to any other duly constituted governmental entity, without a public auction.

E. Owner also has and maintains a communications antennae tower (the "Tower") on the Property. One room in the Building, to which there is exterior access, is used by the Owner to house equipment used in connection with the Tower (the "Equipment Room"). The location of the Equipment Room and Tower are shown on the diagram attached as Exhibit C. The electricity used to operate the Tower and the Equipment Room is separately metered and is billed directly to Owner through its central plant.

F. Pursuant to the terms of this Agreement, Owner intends to lease and sell the Property, including the Improvements, to Tenant, and Tenant intends to lease and purchase the Property, including the Improvements, from Owner; except that Owner shall continue to exclusively use the Tower and the Equipment Room for the duration of this Agreement.

Now, therefore, the parties agree as follows:

1. Lease of Property. Tenant agrees to lease the Property from Owner on an absolute triple net basis for a period of ten (10) years commencing April 1, 2017, and continuing through and until March 31, 2027 (the "Lease Term"), with Base Rent Payments (as hereafter defined) to be applied towards the Purchase Price (as defined in Section 2(a)) for the Property.

1.1 Base Rent. During the Lease Term Tenant shall pay to Owner the following base rent for the Property (collectively, the "Base Rent Payments"):

a. During the Lease Term Tenant shall pay Owner ten (10) annual rent payments due and payable in advance on or before April 1, 2017, and continuing on the same day of each consecutive year thereafter through and until the expiration of the Lease Term, in the amount of Forty-Five Thousand Nine Hundred Fifty and No/100 Dollars (\$45,950.00) (each, an "Annual Payment").

b. If any Annual Payment required hereunder is not paid by Tenant when due and within five (5) days after written notice from Owner to Tenant, then Tenant shall pay Owner a late charge equal to five percent (5%) of the amount due plus default interest at the rate of 12% per annum simple interest on the amount due from the date due until paid in full.

1.2 Operating and Other Expenses Payable by Tenant. Except for Owner's obligation to pay utilities associated with Owner's use of the Tower and Equipment Room pursuant to Section 1.12, the Lease shall be absolutely triple net to Owner, and Tenant shall be solely responsible and indemnify Owner for and timely pay any and all operating costs and expenses of the Property during the Lease Term (the "Operating Expenses"). The Operating Expenses shall include but are not limited to (i) all real estate taxes, assessments, impact fees, road or other improvement district or similar fees, and the cost of any real property tax appeal relating to the Property; (ii) premiums for all insurance maintained by Tenant pursuant to Section 1.4 hereof; (iii) the cost of all electrical, gas, telephone, water and other utilities consumed or used on the Property during the Lease Term, (iv) the cost of maintaining and repairing the Improvements, including exterior and interior walls, the roof and HVAC system, the plumbing and electrical systems, and all structural and non-structural portions of the Property, (v) the cost of maintaining and repairing all interior portions of the Property, including plate glass, windows, doors, light fixtures, window fixtures, built in equipment, and all tenant improvements, (vi) all other expenses, costs and disbursements of every kind and nature required in connection with the operation and maintenance of the Property, it being the intent of the parties that this Lease shall be absolutely triple net to Owner. Tenant shall also be responsible for any rent taxes or similar amounts due on Base Rent Payments and other amounts paid by Tenant hereunder. Notwithstanding the foregoing, Operating Expenses shall not include (A) depreciation, interest, and principal payments of mortgages and other debt costs, if any; (B) federal, state, and city income, excess profit, gift, estate, succession, inheritance, franchise and transfer taxes, and any other taxes relating to the operation of Owner's business but not the Property; and (C) any cost or expenditure or any portion thereof for which Owner has been reimbursed, whether by insurance proceeds or otherwise; except Tenant shall be responsible for routine maintenance, landscaping, operations and any damage to Improvements caused by Tenant or its agents, employees, contractors and invitees. Unless instructed otherwise by Owner, Tenant shall pay all Operating Expenses directly prior to such expenses becoming due.

1.3 Repair and Maintenance. Except for Owner's obligation to maintain and repair the Tower and Equipment Room pursuant to Section 1.12, Tenant shall be responsible for the cost of repairing and maintaining the Property. Except for the Tower and Equipment Room, Tenant shall maintain or cause to be maintained in good repair and condition the entire Property (including the interior and exterior of the Improvements. If Owner (at its election) repairs or maintains any portion of the Property that is supposed to be maintained by Tenant, then Owner may either treat the cost and expense of such maintenance and repairs as an Operating Expense or require Tenant to reimburse Owner for such costs and expenses with interest thereon at the

rate of 12% per annum from the date advanced until paid. Tenant shall not permit undue accumulations of garbage, trash, rubbish or other refuse within the Property, and shall keep all refuse in proper containers on the interior of the Property until disposal of such refuse.

1.4. Insurance. During the Lease Term, the parties shall maintain the following insurance policies for the Property. Owner may provide any required coverage through its self-insurance program under A.R.S. § 11-981, and Tenant may provide any required coverage through the Arizona School Risk Retention Trust, or through another insurer with an A.M. Best rating of not less than A- VII.

(a) Throughout the Lease Term, Tenant, at its sole cost and expense, shall provide and keep in force (i) comprehensive commercial general liability insurance in the following amounts for any one accident or occurrence: property damage not less than \$1,000,000 and personal injury or death not less than \$5,000,000 and (ii) insurance for the Building, and all fixtures, tenant improvements, personal property, and equipment for special extended perils (all risk), at full replacement cost for all property insured, excluding, however, the Tower and all personal property and equipment located in the Equipment Room and owned by Owner. The insurance policies described in this Section 1.4(a) shall name both Tenant and Owner as insureds and shall not be cancelable except upon at least 20 days prior notice to Tenant and Owner.

(b) Throughout the Lease Term, Owner, at its sole cost and expense, shall provide and keep in force, through its self-insurance program, comprehensive commercial general liability insurance in the following amounts for any one accident or occurrence: property damage not less than \$1,000,000 and personal injury or death not less than \$5,000,000. In addition, Owner shall keep in force during the Term, and in the event Owner retains an Easement pursuant to Section 2.2 of this Agreement, for the duration of the Easement, insurance covering loss or damage to Owner's personal property and equipment, including the Tower and all personal property and equipment located in the Equipment Room, at full replacement cost, providing protection for special extended perils (all risk).

(d) At the commencement of the Lease Term, Tenant and Owner shall each deliver to the other evidence of and/or certificates of the insurance required to be maintained hereunder. Owner and Tenant shall also deliver to each other at least ten days prior to the expiration date of such policy or policies (or of any renewal policy or policies), certificates for renewal policies of such insurance.

(e) Owner and Tenant on behalf of themselves and all others claiming under them, including any insurer, waive all claims against each other, including all rights of subrogation, for loss or damage to their respective property (including, but not limited to, the Improvements) arising from any peril or loss insured against by insurance carried by Owner or Tenant hereunder. If either party so requests, the other party shall obtain from its insurer a written waiver of all rights of subrogation that it may have against the other party.

1.5 Compliance with Laws. In its use and occupancy of the Property, Tenant shall comply with all applicable laws and other governmental rules, regulations and orders. Tenant shall indemnify and hold Owner harmless from Tenant's violation of its obligations under this Section 1.5.

1.6 Hazardous Acts. Tenant shall not perform or permit to occur within the Property any act which will increase premiums for any normal and customary casualty, fire (including "all risk" endorsement) and liability or other insurance maintained by Owner or Tenant on the Property or which shall render such insurance void or voidable.

1.7 Condemnation, Fire and Other Casualty.

(a) If the Property, including any Improvement, or any material part of any of them, shall be taken by any authorized entity by eminent domain or by negotiated purchase under threat thereof, and as a consequence thereof the Property shall become totally untenable, the lease described in this Agreement (the "Lease") shall remain in force, or Tenant may elect to pay the remaining amount of the Purchase Price. Tenant shall be entitled to all condemnation proceeds.

(b) In the event of a casualty event, casualty insurance proceeds shall be payable to Owner, and Owner shall use any available casualty insurance proceeds to repair and replace the damaged portion of the Property. If insurance proceeds are insufficient to repair damage caused by a casualty loss, then Tenant shall be responsible for and indemnify Owner for any shortfall. During the period of time the Property is being repaired following a casualty loss there shall be no abatement of rent, and Tenant shall not be allowed to terminate this Lease, regardless of the amount of time it will take to repair damage to the Property caused by a casualty event; provided, however if insurance proceeds are available to Owner to cover the loss of rents during repair, Tenant shall not be responsible for such insured loss of rents.

(c) No destruction of or damage to the Property by fire or any other casualty or cause shall relieve Tenant from its liability to pay the full Base Rent, Operating Expenses and other charges payable under the Lease or this Agreement, and Tenant shall have no right to terminate or surrender the Lease or this Agreement following a casualty event. Tenant waives any rights now or hereafter conferred upon it by statute or other applicable law to terminate or surrender the Lease, this Agreement, the Property or any part thereof, or to any suspension, diminution, abatement or reduction of rent on account of any such destruction or damage.

1.8 Alterations and Improvements. Tenant shall not, until it purchases the Property, make any further alterations or improvements to the Property or the mechanical or electrical systems serving the Property (an "Additional Tenant Improvement"), without the prior written consent of Owner, not to be unreasonably withheld. In this regard, Tenant shall submit detailed plans and specifications for any requested Additional Tenant Improvement to Owner for its review and approval. Any such alterations and improvements for any Additional Tenant Improvements, if approved by Owner, shall be performed in a good and worker-like manner by Tenant at its expense and in compliance with all applicable rules and regulations, by a licensed contractor. Notwithstanding any language in this Section 1.8 to the contrary, Tenant may, without Owner's consent, install temporary partitions, shelves, bins, equipment, trade fixtures, computer and communications wiring and other personal property in the Property. These items shall remain Tenant's property

1.9 Liability and Indemnification. Tenant shall indemnify and save Owner harmless against and from all liabilities, obligations, damages, penalties, claims, costs, charges

and expenses, including reasonable architects' and attorneys' fees, arising out of or related to Tenant's use and operation of the Property, or the use and operation by Tenant's agents, contractors, subtenants, employees, members, managers, students, or invitees (collectively with Tenant, a "Tenant Party"), including, but not limited to, each of the following:

(a) Any work done, in or about the Property or any part thereof by a Tenant Party;

(b) Any use, non-use, possession, occupation, condition, operation, maintenance or management of the Property or any part thereof, by a Tenant Party;

(c) Any negligence on the part of a Tenant Party;

(d) Any liability arising out of the use of the Property by Tenant as an IT Facility or for any other purpose, including any accident, injury or damages to any student, invitee, or other person using the property occurring in, on or about the Property or any part thereof during the Lease Term and caused by a Tenant Party;

In the event any action or proceeding is brought against Owner by reason of any such claim, Tenant, upon written notice from Owner, shall at Tenant's expense resist or defend such action or proceeding. If Tenant has supplied Owner with insurance policies covering any of the aforementioned risks or if Owner otherwise carries insurance which covers any of the aforementioned risks, no claim shall be made against Tenant under this Section 1.9 unless and until the insurer shall fail or refuse to defend and/or pay all or any part thereof. This Section 1.9 shall not be construed as limiting any indemnification obligation of Tenant to Owner described in other sections of the Lease or otherwise existing.

1.10 Assignment and Subletting. Tenant shall not, either voluntarily or by operation of law, directly or indirectly, sell, assign or transfer the Lease or this Agreement, in whole or in part, or sublet the Property or any part thereof, or permit the Property or any part thereof to be occupied by any person, corporation, partnership, or other entity except Owner, Tenant or Tenant's employees, students, or invitees, without the prior written consent of Owner in each instance, which consent may not be unreasonably withheld. Any sale, assignment, mortgage, transfer or subletting of this Agreement which is not in compliance with the provisions of this Section 1.10 shall be void. The consent by Owner to any assignment or subletting shall not be construed as relieving Tenant from obtaining the express prior written consent of Owner to any further assignment or subletting or as releasing Tenant from any liability or obligation hereunder, whether or not then accrued.

1.11 Advances by Owner. If Owner or its affiliate pays any Operating Expense or other expense of the Property that is the obligation of Tenant hereunder (an "Owner Advance") and Tenant does not fully pay and reimburse Owner for the Owner Advance within 5 days after request from Owner, then Tenant shall pay to Owner interest on any portion of the Owner Advance that is due and outstanding at the rate of 12% per annum from the date of the advance until paid in full.

1.12 Owner's Use of Tower and Equipment Room. During the Lease Term or for 20 years from the date hereof, whichever is longer, Owner reserves the sole and exclusive right to continue using the Tower and Equipment Room. During the Lease Term, Owner shall be

solely responsible for repairing and maintaining the Tower and Equipment Room, including without limitation all personal property and equipment located on or within the Tower and Equipment Room. In addition, Owner shall directly pay for all utilities arising from Owner's operation of the Tower and Equipment Room. Owner further agrees to indemnify and hold Tenant harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable attorney's fees and costs arising from Owner's use and operation of the Tower and Equipment Room.

2. Sale and Purchase of Property. Upon the earlier of: (i) expiration of the Lease Term, or (ii) forty-five (45) days after Tenant delivers written notice to Owner that Tenant desires to purchase the Property (the "Purchase Notice"), and so long as Tenant is not in default under this Agreement, Owner agrees to sell to Tenant and Tenant agrees to purchase the Property pursuant to the following terms and conditions:

2.1 Purchase Price. The total purchase price for the Property payable by Tenant to Owner shall be Four Hundred Fifty-Nine Thousand Five Hundred and No/100 Dollars (\$459,500.00), inclusive of finance charges (the "Purchase Price"). All Base Rent Payments made under this Agreement shall be applied towards payment of the Purchase Price. In the event Tenant fails to timely make a required Annual Payment, any late charges or default interest paid by Tenant on the delinquent amount shall not be applied towards the Purchase Price. The Purchase Price shall be payable by Tenant in cash or currently available funds as specified in paragraph 1.1 hereof.

2.2 Retention of Easement for Tower and Equipment. If Owner is still utilizing the Tower and Equipment Room as part of a regional emergency management communications system, Owner may retain an easement (the "Easement") giving it the right to continue using, maintaining, repairing, and if necessary replacing the Tower on the Property at its present location, and continue using the Equipment Room. This Easement will be in a form mutually acceptable to Owner and Tenant, but will contain the following terms and conditions: Owner's use of the Tower and Equipment Room will be subject to the same terms of use as provided in this Agreement; Owner will be required to abandon or quitclaim the retained easement to Tenant, and remove the Tower and all contents of the Equipment Room, if at any time Owner no longer needs to utilize the Tower as part of a regional emergency management communications system; and if Tenant at any time decides to demolish the Building, Owner's right to use the Equipment Room will end and Owner will instead have the right to erect a small enclosure next to the Tower to house the necessary equipment. Owner shall have no obligation to pay rent to Tenant for its use of the Tower and Equipment Room for twenty (20) years, which includes both the actual Lease Term and the period of time commencing upon Tenant's acquisition of the Property and execution of the Easement described above. If Owner continues to use the Tower and Equipment Room after the 20-year period, then Owner shall pay rent to Tenant, on an annual basis, for the use of the Tower and Equipment Room at a reasonable rental rate based upon the square footage used and the then-existing commercial rental rates in the area within a 3-mile radius. Annual rent shall be paid in advance.

2.3 Escrow and Title.

(a) Upon the earlier of: (i) forty-five (45) days before the expiration of the Lease Term, or (ii) within five (5) business days after receipt of the Purchase Notice,

Owner will open escrow for this transaction with Escrow Agent (as defined below). This Agreement will constitute escrow instructions. Tenant and Owner will, if necessary execute the Escrow Agent's standard escrow agreement.

(b) Escrow Agent will, within 10 days after the opening of escrow, distribute to Owner and Tenant a Commitment for Standard Owner's Title Insurance (the "Commitment") together with complete and legible copies of all documents of record, including all that will remain as exceptions to Tenant's policy of title insurance.

(c) Tenant will have 10 business days after receipt of the Commitment (the "Disapproval Period") within which to notify Owner and the Escrow Agent in writing of Tenant's disapproval of any Schedule B exceptions listed on the Commitment (the "Disapproval Notice"). In the event of such disapproval, Owner will have 10 days from receipt of the Disapproval Notice in which to notify Tenant in writing whether Owner intends to eliminate each of the disapproved Exceptions prior to Closing. If Owner fails to notify Tenant of its intent with respect to the disapproved items within that time period or if Owner elects not to cure all disapproved items, Tenant may terminate this Agreement and the escrow will be cancelled. Notwithstanding the above, Tenant may not object to any of the matters disclosed on Exhibit D attached to this Agreement, which Tenant agrees are permitted exceptions.

(d) The closing of the transaction described herein shall occur on the earlier of: (i) the last day of the Lease Term, or (ii) on a date to be selected by the parties within forty-five (45) days after Tenant delivers written notice to Owner that Tenant desires to purchase the Property (the "Closing" or "Closing Date").

(e) Tenant's obligation to Close is contingent upon Title Company being unconditionally obligated to issue a Standard Owner's Title Insurance Policy for the Property, in the amount of the Purchase Price, subject only to the items listed on Exhibit B of the Commitment to which Tenant has not objected as provided above, and the standard printed exceptions in the policy; provided, however, that Owner must cause all monetary liens and encumbrances on the Property to be removed before Closing, whether or not Tenant has objected to any such encumbrances.

(f) Fidelity National Title Insurance Company, 1745 E. River Road, Suite 145, Tucson, Arizona 85718, will act as the escrow agent for the Closing of this sale transaction and issue an owner's policy of title insurance to Tenant ("Escrow Agent" or "Title Company").

2.4 Conveyance Document. Upon payment of the Purchase Price, Owner shall convey title to the Property to Tenant or its designee by Special Warranty Deed subject to no monetary liens except the statutory lien for unpaid taxes or assessments not yet due, but subject to retention of the Easement by Owner if applicable. In addition to the Special Warranty Deed, Owner shall execute and deliver to Tenant at Closing, title to all personal property owned by Owner and located on the Property that Owner has not removed, other than the Tower and the contents of the Equipment Room if Owner is retaining the Easement, by execution of a Bill of Sale from Owner in favor of Tenant.

2.5 Prorations. Closing costs will be divided equally between the parties as is customary in Pima County, Arizona. Owner will pay for the standard owner's policy of title insurance for Tenant in the amount of the Purchase Price. Each party shall be responsible for its own attorney's fees. There will be no proration of Operating Expenses for the Property at Closing since Tenant is responsible for Operating Expenses pursuant to the Lease.

2.6 Owner's Representations. As of the Effective Date and as of Closing, Owner represents and warrants to Tenant as follows:

(a) Organization and Authority. Owner validly exists in the state of Arizona and has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Owner at the Closing will be, authorized by Owner's Board of Supervisors and properly executed, and constitutes, or will constitute, as appropriate, the valid and binding obligation of Owner, enforceable in accordance with their terms.

(b) Conflicts and Pending Action. Owner has not received written notice of (i) any litigation or condemnation, environmental, zoning or other land-use regulation proceedings or any other legal, administrative or governmental proceeding or investigation, either instituted or planned to be instituted, which would materially and adversely affect the ownership, use, operation or value of the Property, or (ii) any special assessment proceedings affecting the Property. Seller shall notify Purchaser promptly of any such litigation or proceedings of which Seller becomes aware.

(c) No Third-Party Rights. There are no leases, occupancy agreements, easements, licenses or other agreements which grant third-parties any possessory or usage rights to all or any part of the Property.

(d) Litigation. To Owner's knowledge (a) there are no actions, investigations, suits or proceedings pending or threatened that affect the Property, and (b) there are no judgments, orders, awards or decrees currently in effect against Owner or the Property with respect to the ownership or operation of the Property.

(e) No Conflict with Other Agreements. To Owner's knowledge, the execution, delivery and performance by Owner of this Agreement will not result in any violation of, or conflict with, or constitute a default under, any provisions of any agreement of Owner or any mortgage, deed of trust, indenture, lease, security agreement, or other instrument, covenant, obligation, or agreement to which Owner or the Property is subject, or any judgment, law, writ, decree, order, injunction, rule, ordinance or governmental regulation or requirement affecting Owner or the Property.

(f) Bankruptcy. There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Owner or filed by Owner, or to Owner's knowledge, pending in any current judicial or administrative proceeding against Owner.

(g) No Known and Undisclosed Violations of Current Laws. Owner has no knowledge of any violation of any law, statute, ordinance, regulation, or administrative or judicial order or holding with respect to the Property (including, without limitation, violations of any environmental laws), which violation has not been corrected or disclosed to Tenant.

(h) Defects. Owner has not been advised that any improvement on the Property is subject to or contains any latent structural, roof, foundation or engineering defect.

(i) OFAC. Owner is in compliance with, and, to Owner's knowledge, all beneficial owners of Owner are, in compliance with the requirements of Executive Order No. 13224, 66 Fed Reg. 49079 (September 25, 2001) (the "**Order**") and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of the Treasury ("**OFAC**") and any enabling legislation or other Executive Orders in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "**Orders**"). Neither Owner nor, to the best of Owner's knowledge, any beneficial owner of Owner:

* is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "**Lists**");

* has been determined by competent authority to be subject to the prohibitions contained in the Orders; or

* is owned or controlled by, or acts for or on behalf of, any person or entity on the Lists or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders.

"Owner's knowledge" as used in this Agreement means the actual current knowledge of the County Administrator, the Director of Facilities Management, and the Manager of Real Property Services, without investigation.

2.7 Tenant's Representations and Warranties. As of the Effective Date and as of Closing, Tenant and Tenant's Designated Representative represent and warrant to Owner as follows:

(a) Organization and Authority. Tenant is validly existing in the state of Arizona and has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Tenant at the Closing will be, authorized by Tenant's Governing Board and properly executed, and constitute, or will constitute, as appropriate, the valid, lawful, and binding obligation of Tenant, enforceable in accordance with their terms.

(b) Litigation. To Tenant's knowledge (a) there are no actions, investigations, suits or proceedings pending or threatened that affect the Property, and (b) there are no judgments, orders, awards or decrees currently in effect against Tenant that would prevent Tenant from executing or performing the terms of this Agreement.

(c) No Conflict with other Agreements. To Tenant's knowledge, the execution, delivery and performance by Tenant of this Agreement and the performance by Tenant of its obligations hereunder will not result in any violation of, or conflict with, or constitute a default under, any provisions of any agreement of Tenant or any mortgage, deed of trust, indenture, lease, security agreement, or other instrument, covenant, obligation, or agreement to which Tenant or the Property is subject, or any judgment, law, writ, decree, order, injunction, rule, ordinance or governmental regulation or requirement affecting Tenant.

(d) Bankruptcy. There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Tenant or filed by Tenant, or to Tenant's knowledge, pending in any current judicial or administrative proceeding against Tenant.

(e) Binding Obligations of Tenant. This Agreement has been, and all of the documents to be delivered by Tenant pursuant to this Agreement will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of Tenant, enforceable in accordance with their terms.

(f) Tenant's Governing Board has authorized its designated representative, Dan Contorno ("Tenant's Designated Representative"), to review and approve this Agreement, and Tenant's Designated Representative by his signature below represents and warrants to Owner to the best of his knowledge that (i) this Agreement is permitted by Arizona law, (ii) monies are available in an unrestricted capital outlay fund to pay Base Rent Payments and other amounts due pursuant to this Agreement, (iii) Tenant's Governing Board has authorized Tenant's Designated Representative to execute this Agreement for and on behalf of Tenant's Governing Board, and to review and approve the terms of this Agreement.

"Tenant's knowledge" as used in this Agreement means the actual current knowledge of Tenant's Designated Representative, without investigation

3. Default and Remedies. If either party (a "Defaulting Party") defaults under this Agreement by failing to timely perform its obligations hereunder within five (5) days after written notice from the other party (the "Non Defaulting Party"), then the Non Defaulting Party may pursue any remedy available at law or equity against the Defaulting Party.

4. Headings. The article and section headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

5. Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

6. Governing Law. This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with Arizona law, and any action to enforce or interpret this Agreement shall be brought only in Pima County, Arizona.

7. No Third Party Beneficiary. This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third party beneficiary, decree, or otherwise.

8. Entire Agreement and Amendments. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

9. Time. Time is of the essence in the performance of this Agreement.

10. Attorneys' Fees. Should either party employ attorneys to enforce any of the provisions hereof, the substantially non prevailing party shall pay to the substantially prevailing party all reasonable costs, charges, and expenses, including attorneys' fees, expended or incurred by the substantially prevailing party in connection therewith.

11. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

If to Owner: Pima County, Arizona
Attention: Finance Director
130 West Congress, 6th Floor
Tucson, Arizona 85701
Telephone: (520)724-8661
Facsimile: (520)724-8171

If to Tenant Marana Unified School District
Attention: Superintendent
11279 West Grier Road
Marana, Arizona 85653
Telephone: (520) 682-3243
Facsimile: (520) 682-2421

With Copies to Kathryn B. Nelson
DeConcini, McDonald, Yetwin & Lacy, P.C.
2525 E. Broadway Blvd., Suite 200
Tucson, Arizona 85716-5300
Telephone: 520-322-5000
Facsimile: 520-322-5585

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such courier, (b) sent by email, with written confirmation by overnight or first class mail, in which case notice shall be deemed delivered upon receipt of confirmation transmission of such facsimile notice, or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. Any notice sent by facsimile or personal delivery and delivered after 5:00 local time where the Property is located shall be deemed received on the next business day.

A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

12. Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction -- to the effect that any ambiguities are to be resolved against the drafting party -- shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

13. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor legal holiday. The last day of any period of time described herein shall be deemed to end at 6 p.m. local time where the Property is located.

14. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature.

15. Heirs, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

16. Recordation. A Memorandum giving notice of this Agreement and in a form reasonably acceptable to Owner and Tenant may be recorded by either party in the records of the Pima County Recorder.

17. Broker's Commission. No broker or finder has been used and neither Party owes any brokerage or finders fees related to this Agreement.

18. Immigration Law Compliance.

18.1 Owner warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other federal and state immigration laws and regulations related to the immigration status of its employees. These warranties shall remain in effect through the term of the Agreement, and Owner and its contractors and consultants of every tier shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act for all employees performing work pursuant to this Agreement. I-9 forms are available for download at USCIS.GOV.

18.2 Tenant may request, and Owner agrees to furnish, verification of compliance from Owner or its contractors and consultants of any tier performing work pursuant to this Agreement. Should Tenant reasonably believe or discover that Owner or its contractors or consultants of any tier are not in compliance, Tenant may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Agreement for default, and suspension and/or debarment of Owner or its consultants and contractors. All costs necessary to verify compliance are the responsibility of Owner.

19. Compliance with Fingerprinting Requirements. Owner shall comply with the requirements of A.R.S. § 15-512(H) regarding the fingerprinting of employees of Owner, contractors and consultants of every tier and vendors who are likely to have unsupervised contact with pupils as determined by Tenant, in its sole discretion. Owner shall be responsible for payment of all costs associated with compliance with A.R.S. § 15-512(H).

20. Cancellation. This Agreement is subject to cancellation within three (3) years after its execution pursuant to A.R.S. § 38-511, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Owner or Tenant is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent or any other party to the Agreement with respect to the subject matter of the Agreement.

*[Remainder of Page Intentionally Left Blank-
Signature Page to Follow]*

Owner:

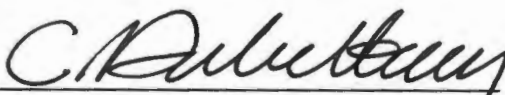
PIMA COUNTY

By: _____
Sharon Bronson, Chair of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO CONTENT:

By: 
C.H. Huckelberry, County Administrator

APPROVED AS TO FORM:



Deputy County Attorney
REGINA NASSEN

Tenant:

MARANA UNIFIED SCHOOL DISTRICT

By: _____
Daniel J. Contorno, Designated Representative

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

PARCEL 1:

All that portion of the Southwest quarter of the Northeast quarter of Section 27, Township 11 South, Range 11 East, Gila and Salt River Base and Meridian, Pima County, Arizona described as follows, to-wit:

Beginning at the Northwest corner of the Southwest quarter of the Northeast quarter of said Section 27;

Thence North $89^{\circ} 17' 12''$ East a distance of 30.0 feet to a point on the East right of way line on Lon Adams Road;

Thence South $00^{\circ} 36' 22''$ East along the said right of way a distance of 31.03 feet to a point said point being the TRUE POINT OF BEGINNING;

Thence North $39^{\circ} 42' 00''$ East a distance of 500.01 feet to a point;

Thence South $00^{\circ} 36' 22''$ East a distance of 220.54 feet to a point;

Thence South $89^{\circ} 19' 14''$ West a distance of 500.00 feet to a point on the East right of way of Lon Adams Road;

Thence North $00^{\circ} 36' 22''$ West along said right of way line a distance of 223.85 feet to a point, said point being the TRUE POINT OF BEGINNING.

PARCEL 2:

An easement for existing 6 inch sewer line.

EXHIBIT B
DEPICTION OF PROPERTY SHOWING IMPROVEMENTS



EXHIBIT C

DIAGRAM OF BUILDING SHOWING EQUIPMENT ROOM AND TOWER

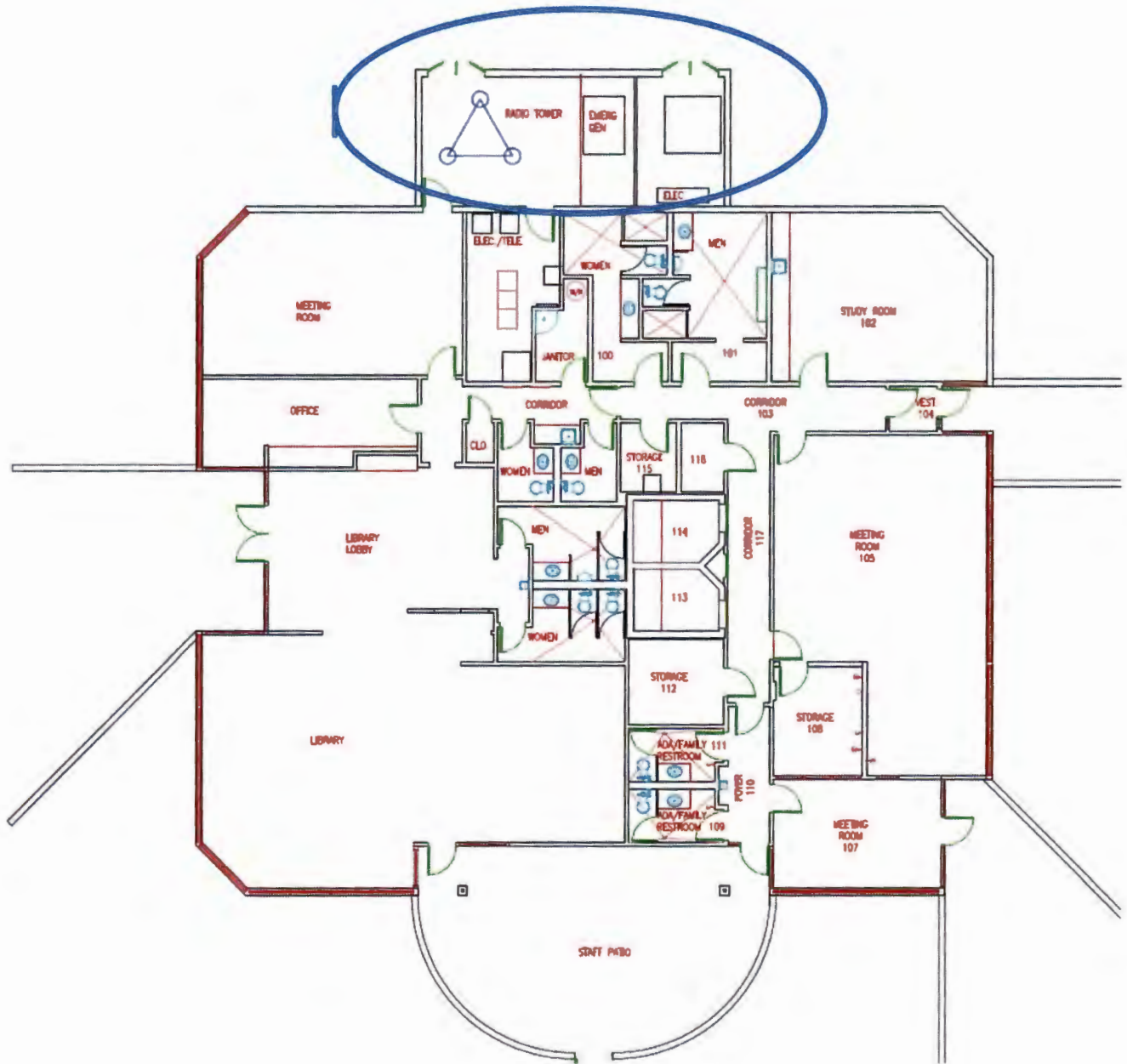


EXHIBIT D
PERMITTED EXCEPTIONS

COMMITMENT FOR TITLE INSURANCE SCHEDULE B

File No.: 05504-21351

Showing matters which will be excepted in the Policy unless the same are disposed of to the satisfaction of the Company.

- i. Defects, liens, encumbrances, adverse claims or other matters, if any, created first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
- ii. Subject to the usual printed exclusions and exceptions contained in the regular form of policy, reprinted for reference on the Addendum attached hereto.

The following matters will be excepted in Schedule B of the policy to be issued:

1. Water rights, claims or title to water, and agreements, covenants, conditions or rights incident thereto, whether or not shown by the public records.
2. Reservations or exceptions in Patents or in Acts authorizing the issuance thereof.
3. Easement for gas lines and rights incident thereto, as set forth in instrument recorded in [Book 51 of Miscellaneous Records at page 112.](#)
4. Easement for telephone and telegraph lines and rights incident thereto, as set forth in instrument recorded in [Book 103 of Miscellaneous Records at page 225.](#) Partial Release recorded in [Docket 10957, page 843.](#)
5. Easement for stated therein and rights incident thereto, as set forth in instrument recorded in [Docket 600, page 530.](#)
6. Easement for electric transmission line or systems and rights incident thereto, as set forth in instrument recorded in [Docket 854, page 237.](#)
7. Easement for gas lines and rights incident thereto, as set forth in instrument recorded in [Docket 1014, page 489.](#)
8. Easement for telephone and telegraph lines and rights incident thereto, as set forth in instrument recorded in [Docket 1431, page 593.](#)
9. Easement for stated therein and rights incident thereto, as set forth in instrument recorded in [Docket 1951, page 514.](#)
10. Easement for electric transmission line or systems and rights incident thereto, as set forth in instrument recorded in Docket 2547, page 194 and re-recorded in [Docket 2557, page 139.](#)
11. Easement for electric transmission line or systems and rights incident thereto, as set forth in [Docket 3442, page 39.](#)
12. Easement for communication facilities and rights incident thereto, as set forth in instrument recorded in [Docket 3572, page 95.](#)
13. Easement for electric transmission line or systems and rights incident thereto, as set forth in instrument recorded in [Docket 4441, page 524.](#)
14. Restrictions, Conditions, Covenants, Reservations, including but not limited to any recitals creating easements, liabilities, obligations or party walls, omitting, if any, from the above, any restrictions based on race, color, religion, sex, handicap, familial status or national origin contained in instrument recorded in [Docket 4988, page 418.](#)

COMMITMENT FOR TITLE INSURANCE
SCHEDULE B

File No.: 05504-21351

15. Liabilities and obligations imposed upon said land by reason of its inclusion within Marana Park Underground District under Ordinance No. 1974-76 recorded in [Docket 4925, page 235.](#)
16. Easement for electric transmission line or systems and rights incident thereto, as set forth in instrument recorded in Docket 5129, page 338 and re-recorded in [Docket 5245, page 870.](#)
17. Easement for communication facilities and rights incident thereto, as set forth in instrument recorded in [Docket 5135, page 323.](#)
18. Easement for electric transmission line or systems and rights incident thereto, as set forth in instrument recorded in [Docket 5212, page 682.](#)
19. Easement for sewer lines as reserved therein and rights incident thereto, as set forth in instrument recorded in [Docket 5310, page 281.](#)
20. Easement for communication facilities and rights incident thereto, as set forth in instrument recorded in [Docket 5313, page 101](#)
21. Easement for communication facilities and rights incident thereto, as set forth in instrument recorded in [Docket 5340, page 684.](#)
22. Easement for electric transmission line or systems and rights incident thereto, as set forth in instrument recorded in [Docket 5429, page 358.](#)
23. Easement for communication facilities and rights incident thereto, as set forth in instrument recorded in [Docket 6546, page 501.](#)
24. Liabilities and obligations imposed upon said land by reason of its inclusion within Cortaro- Marana Irrigation District and Cortaro Water Users Association.
25. Certificate of Grandfathered Groundwater Right recorded in [Docket 8560, page 778.](#)
26. Provisions, terms and conditions within Resolution No. 1991-36 recorded in [Docket 9018, page 790.](#)
27. Terms and conditions of Temporary Construction Easement recorded in [Docket 10561, page 656.](#)
28. Terms, conditions, covenants, restrictions, easements, liabilities and obligations as set forth in Intergovernmental Agreement recorded in [Docket 11932, page 570.](#)
29. Liabilities and obligations imposed upon said land by reason of its inclusion within Northwest Fire District.
30. Matters shown on survey recorded in [Book 36 of Maps, page 79.](#)
31. Liabilities and obligations imposed upon said land by reason of its inclusion within Town of Marana General Plan.
32. Terms, conditions, covenants, restrictions, easements, liabilities and obligations as set forth in Water and Pipeline Easement recorded in [Docket 13106, page 1212.](#)
33. Terms and conditions of Temporary Easement recorded in [Docket 13121, page 1617.](#)
34. Terms and conditions of Franchise recorded in [Sequence No. 2011-1530134.](#)

COMMITMENT FOR TITLE INSURANCE
SCHEDULE B

File No.: 05504-21351

35. Any rights or encroachments by reason of common improvements shared by the property described in Schedule A and that property located adjacent of the subject property which are not disclosed by those public records which impart constructive notice.
36. Any easements or rights of way not disclosed by those public records which impart constructive notice and which are not visible and apparent from an inspection of the surface of said land.