



BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 3/21/2023

* = Mandatory, information must be provided

or Procurement Director Award: ☐

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

6971, LLC., and 6991, LLC.

***Project Title/Description:**

Agreement

***Purpose:**

Pima County previously entered into an Encroachment Management Agreement ("EMA") with the United States of America/Davis Monthan Air Force Base (DMAFB) to participate in the REPI program. The REPI program is designed to reduce encroachments and intensifying land uses within military installation environments that can have the effect of limiting or restricting base operations. Under the REPI program restrictive easements are acquired from willing private property owners to prevent residential and other non-compatible development uses within the Approach-Departure Corridor ("ADC") of DMAFB. The purpose of this action is to modify an existing Deed of Easement that had previously restricted the property ("4.16 acres") to allow for it to be used for vehicular parking. This use is a compatible use within the ADC. Simultaneously an additional restrictive Deed of Easement on an adjacent parcel ("4.55 acres") will be acquired that will have the purpose of reducing potential incompatible uses that conflict with the REPI program. (ACQ-1127/1128)

***Procurement Method:**

Exempt pursuant to Pima County Code 11.04.020

***Program Goals/Predicted Outcomes:**

In return for modifying the Deed of Easement on the 4.16 acre property to allow a parking use, a restrictive Deed of Easement restricting uses through a reduction of the allowable employee density on the adjacent 4.55 acre property will be established and recorded. This furthers the REPI program goals of reducing encroachment on properties within the ADC and encouraging uses compatible with the mission of DMAFB that do not impact current or future military training, testing or operations. DMAFB personnel have reviewed and approved the proposed transaction.

***Public Benefit:**

The easement agreements further public safety efforts in the ADC and support the continued viability of DMAFB training and operations.

***Metrics Available to Measure Performance:**

Pima County will acquire a restrictive easement over the 4.55 acre property in return for modifying the existing restrictive easement on the 4.16 acre property. The modification of the existing restrictive easement and the establishment of the new restrictive easement are in lieu of any cash consideration to be paid to either party. Pima County will pay up to \$7,000.00 in closing costs, in the form of a Payment Request (PR) directly to the Title company. Under the EMA, the County will invoice DMAFB, and DMAFB will reimburse the County for these costs.

***Retroactive:**

No

Location map attached:

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*0137
 Commencement Date: 3/21/2023 Termination Date: 3/20/2024 Prior Contract Number (Synergen/CMS): _____
☐ Expense Amount \$ _____ * ☒ Revenue Amount: \$ 0.00

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

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

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

Amount This Amendment: \$ _____

***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: George Andros

Department: Real Property Services

Telephone: 724-6308

Department Director Signature: _____

Date: 3/1/2023

Deputy County Administrator Signature: _____

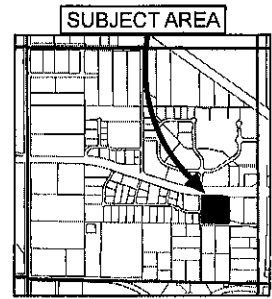
Date: 3/1/2023

County Administrator Signature: _____

Date: 3/1/2023

Location Map

SECTION 07
TOWNSHIP 15 SOUTH
RANGE 15 EAST



SECTION 07 G&SRM
PIMA COUNTY, ARIZONA

SOUTHPOINT RD

MCCULLOCH DR

VALENCIA RD

4.16 acres
141-03-036B
6971 LLC

4.55 acres
141-03-037B
6991 LLC

OLD VAIL RD



LEGEND

 Subject Properties

DRAWING NOT TO SCALE

DATE: Feb 2023



AGREEMENT

This Agreement (this "**Agreement**") is made by and between 6971, LLC, an Arizona limited liability company ("**6971 LLC**"), 6991, LLC, an Arizona limited liability company ("**6991 LLC**"), and PIMA COUNTY, a political subdivision of the State of Arizona ("**County**"). 6971 LLC, 6991 LLC, and County are collectively referred to herein as the "**Parties**" and individually as a "**Party**".

RECITALS

- A. 6971 LLC owns the parcel of real property in Pima County, Arizona, described in **Exhibit A** and depicted on **Exhibit A-1** (the "**6971 LLC Property**");
- B. 6991 LLC owns the parcel of real property in Pima County, Arizona, described in **Exhibit B** and depicted on **Exhibit B-1** (the "**6991 LLC Property**");
- C. County holds a Deed of Easement (the "**2018 Deed of Easement**") on and over the 6971 LLC Property, as recorded in the Office of the Pima County Recorder on June 14, 2018, at Sequence No. 20181650370;
- D. 6971 LLC desires to utilize the 6971 LLC Property for the surface parking of and storage facilities for vehicles, including recreational vehicles, boats, and trailers, but such a use requires modification of the 2018 Deed of Easement and the rezoning of the 6971 Property.
- E. 6991 LLC has agreed to reduce the potential number of employees that may be employed on the 6991 LLC Property, in consideration of the modification of the 2018 Deed of Easement hereunder.

Now Therefore, the Parties agree to the following terms and conditions:

1. **Easement Granted by 6991 LLC.** In consideration of the modification to the 2018 Deed of Easement, 6991 LLC will grant to County an easement in the form set forth as the attached **Exhibit "C"**, restricting the number of employees that are allowed to occupy the 6991 Property (the "**6991 Property Easement**").

2. **Modification of 2018 Deed of Easement.** In consideration of granting the 6991 Property Easement, County will modify the terms of the 2018 Deed of Easement by modification in the form set forth as the attached **Exhibit "D"** to allow uses of the property not currently allowed under the terms of the 2018 Deed of Easement (the **"Modification of Easement"**). Additionally, County acknowledges and does not object to 6971 LLC's application to the City of Tucson for a rezoning of the 6971 LLC Property from Suburban Ranch (SR) to a City of Tucson zoning designation that is compatible with the intended use defined herein.
3. **Consideration.** No additional compensation or consideration will be paid by or to the Parties for the 6991 Property Easement or for the Modification of Easement.
4. **Title Company:** Stewart Title & Trust of Tucson.
5. **Escrow.** Title Company will act as escrow agent for the transactions contemplated hereby. This Agreement will constitute escrow instructions in connection with the escrow established with Title Company under this Agreement (the **"Escrow"**). Title Company will make reasonably suitable arrangements with any of the Parties, upon that Party's request, to have that Party execute any of the documents to be executed by that Party as provided in this Agreement at the office of Title Company that is most convenient for the Party.
6. **Closing Date.** Closing pursuant to this Agreement shall take place on the earlier of (i) fifteen (15) days after the rezoning ordinance rezoning the 6971 LLC Property, as contemplated hereby, becomes final and non-appealable, and (ii) May 31, 2024. Notwithstanding the foregoing, this Agreement will terminate if Closing has not occurred within one (1) year after execution by County, unless County obtains approval by the Pima County Board of Supervisors to extend the Closing Date beyond such one (1)-year period. Notwithstanding any implication to the contrary, the obligations of the Parties to consummate the transactions contemplated hereby are expressly conditioned upon the successfully rezoning of the 6971 LLC Property as contemplated hereby. In the event that such rezoning is unsuccessful, then and in that event, the Parties shall mutually terminate this Agreement, and the Parties' rights and obligations shall thereupon cease and terminate.
7. **Closing Costs.** The closing costs (**"Closing Costs"**) will be paid as follows:
 - 7.1. All escrow fees and recording fees, if any, shall be paid by County.
 - 7.2. County will pay a reasonable fee for any necessary Releases and/or other Closing Costs related to the Closing.
8. **County's Maximum Costs.** County's share of Closing Costs shall not exceed Seven Thousand Dollars (\$7,000.00). Any closing costs in excess of the County's Maximum Costs will be paid by 6971 LLC.
9. **Deliveries by 6991 LLC at Closing.** At Closing, 6991 LLC will deliver to County through Escrow the 6991 Property Easement.

10. **Deliveries by Seller at Closing.** At Closing, County will deliver to 6971 LLC through Escrow the Modification to the 2018 Deed of Easement and the applicable closing fees.

11. **Notices.**

- 11.1. 6971 LLC Address: 120 S. Houghton Road, Suite 138, PMB 318, Tucson, AZ 85748-2155; E-mail: markf1@cox.net
- 11.2. 6991 LLC Address: 120 S. Houghton Road, Suite 138, PMB 318, Tucson, AZ 85748-2155; E-mail: markf1@cox.net
- 11.3. Buyer's Address: Director, Pima County Real Property Services, 201 N Stone Ave, 6th Flr, Tucson, AZ 85701-1207; E-mail: jeffrey.teplitsky@pima.gov

12. **Broker's Commission.** No broker or finder has been used and none of the Parties owes any brokerage or finders fees related to this Agreement.

13. **Default, Remedies, and Conditions Precedent.** In the event that any of the Parties default under this Agreement, the other Parties shall be entitled to pursue all rights and remedies available at law or in equity, including specific enforcement. To the extent that a Party seeks damages, the recovery is limited to actual damages (including any losses or penalties suffered by County as a result of any violation of federal arbitrage violations caused by a wrongful failure of the other Parties to perform). None of the Parties is entitled to exemplary, punitive, special, indirect or consequential damages.

14. **Exhibits.** The following Exhibits to this Agreement are fully incorporated herein as if set forth at length.

<u>Exhibit A</u>	6971 LLC Property
<u>Exhibit A-1</u>	6971 LLC Property Depiction
<u>Exhibit B</u>	6991 LLC Property
<u>Exhibit B-1</u>	6991 LLC Property Depiction
<u>Exhibit C</u>	6991 LLC Property Easement
<u>Exhibit D</u>	Modification to 2018 Deed of Easement

15. **Effective Date.** This Agreement will become effective on the last date when all of the Parties have signed it (the "**Effective Date**"). The County is deemed to have signed this Agreement on the date that the Chairman of the Pima County Board of Supervisors signs.

16. **Miscellaneous Provisions.** The following miscellaneous provisions apply to this Agreement:

16.1. **Notices.**

- 16.1.1. **Writing.** All notices required or permitted to be given hereunder must be in writing and mailed by first class, registered, certified or overnight mail, return receipt

requested, postage prepaid, or transmitted by electronic mail, facsimile, or hand delivered, addressed to the respective Parties' address.

- 16.1.2. **Receipt.** If mailed, all such notices, demands, requests, or other communications are deemed received upon the expiration of seventy-two (72) hours after deposit in the U.S. mail as aforesaid. Notice served personally or by electronic mail or facsimile is deemed served upon delivery thereof to the addressee. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given is deemed to be receipt of the notice, demand or request sent. Any Party entitled to notices hereunder may from time to time designate to the other Parties, in writing and given in accordance with this Section, a different address for service of notice.
- 16.2. **Governing Law.** This Agreement is subject to, and interpreted by and in accordance with, the laws of the State of Arizona. Any action to be brought under this Agreement must be filed and maintained in the Pima County, Arizona, Superior Court.
- 16.3. **Entire Agreement.** This Agreement, along with the exhibits hereto, is the entire Agreement of the Parties respecting the subject matter hereof. There are no other agreements, representations or warranties, whether oral or written, respecting the subject matter hereof.
- 16.4. **Interpretation.** This Agreement, and all the provisions of this Agreement, is deemed drafted by all of the Parties. This Agreement will not be interpreted strictly for or against any Party, but solely in accordance with the fair meaning of the provisions hereof to effectuate the purposes and intent of this Agreement.
- 16.5. **No Representations.** Each Party has entered into this Agreement based solely upon the agreements, representations and warranties expressly set forth herein and upon that Party's own knowledge and investigation. Neither Party has relied upon any representation or warranty of any other Party except any such representations or warranties as are expressly set forth herein.
- 16.6. **Signing Authority.** Each of the persons signing below on behalf of a Party represents and warrants that the signer has full requisite power and authority to execute and deliver this Agreement on behalf of the Party for whom the signer signs and to bind such Party to the terms and conditions of this Agreement.
- 16.7. **Counterparts.** This Agreement may be executed in counterparts, each of which is effective as an original. This Agreement becomes effective only when all of the Parties have executed the original or counterpart hereof. This Agreement may be executed and delivered by a facsimile transmission, electronic signature, or email of a counterpart signature page hereof.
- 16.8. **Attorney's Fees and Costs.** In any action brought by a Party to enforce the obligations of

any other Party, the prevailing Party is entitled to collect from the opposing Party to such action such Party's reasonable litigation costs and attorney's fees and expenses, including court costs, reasonable fees of accountants and experts, and other expenses incidental to the litigation in addition to all other relief, all of which will be set by a judge and not by a jury, to which the prevailing Party may be entitled.

- 16.9. **Binding Affect.** This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns.
- 16.10. **No Third Party Beneficiaries.** This is not a third party beneficiary contract. No person or entity other than a Party signing this Agreement has any rights under this Agreement, except as expressly provided in this Agreement.
- 16.11. **Amendment.** This Agreement may be amended or modified only in a writing signed by the Parties, which specifically references this Agreement.
- 16.12. **No Partnership.** Nothing in this Agreement creates a partnership or joint venture, or authorizes any Party to act as agent for or representative of any other Party.
- 16.13. **No Waiver.** The failure of a Party to require full or timely performance of any obligation arising under this Agreement (whether on a single occasion or on multiple occasions) is not a waiver of any such obligation. No such failure gives rise to any claim of estoppel, laches, course of dealing, amendment of this Agreement by course of dealing, or other defense of any nature to any obligation arising hereunder.
- 16.14. **Time of the Essence.** Time is of the essence with respect to each obligation arising under this Agreement.
- 16.15. **Conflict of Interest.** 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 County is, at any time while this Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement with respect to the subject matter of the Agreement.

Each Party is signing this Agreement on the date stated opposite that Party's signature, and the effective date of this Agreement shall on the date executed and delivered by County.

SIGNATURES FOLLOW ON NEXT PAGES

6971 LLC:

6971, LLC, an Arizona limited liability company

Signature

Date

Mark A. Ferganchick, its Manager

6991 LLC:

6991, LLC, an Arizona limited liability company

Signature

Date

Mark A. Ferganchick, as Trustee of The Sonya C. and Mark
A. Ferganchick, its Sole Member

COUNTY:

PIMA COUNTY, a political subdivision of the State of Arizona:

Chairman, Board of Supervisors

Date

ATTEST:

Clerk of Board

Date

APPROVED AS TO CONTENT:

Director, Real Property Services

Carmine DeBonis, Deputy County Administrator, Public Works

APPROVED AS TO FORM:

Bobby Yu, Deputy County Attorney

Exhibit A

6971 LLC Property

The West 330 feet of the South half of the Northeast Quarter of the Southeast Quarter of Section 7, Township 15 South, Range 15 East, Gila and Salt River Base and Meridian, Pima County, Arizona;

EXCEPT the South 30 feet; and

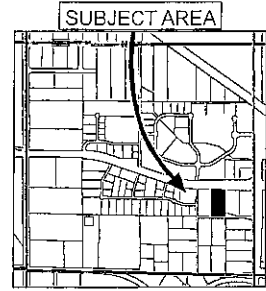
EXCEPT the West 30 feet; and

EXCEPT that portion of real property described in Sequence No. 2017-0900770; and

EXCEPT all coal and other minerals as reserved by the United States of America

EXHIBIT A-1

SECTION 07
TOWNSHIP 15 SOUTH
RANGE 15 EAST



SECTION 07 G&SRM
PIMA COUNTY, ARIZONA



23010

PIMA COUNTY DEPARTMENT OF TRANSPORTATION
ENGINEERING INFORMATION MANAGEMENT

DRAWING NOT TO SCALE

DRAWN BY: A GRIFFIN

DATE: JAN 2023

LEGEND

 Subject Property

Exhibit B

6991 LLC Property

The West 330 feet of the East 990 feet of the South half of the Northeast quarter of the Southeast quarter of Section 7, Township 15 South, Range 15 East, Gila and Salt River Base and Meridian, Pima County, Arizona.

EXCEPT any portion thereof, if any, lying within the West 330 feet of said South half of the Northeast quarter of the Southeast quarter; and

EXCEPT the South 30 feet thereof; and

EXCEPT the North 25 feet thereof; and

FURTHER EXCEPT that portion thereof conveyed in instrument recorded in Sequence No. 20170900782, described as follows:

A portion of the Northeast Quarter of the Southeast Quarter of Section 7, Township 15 South, Range 15 East, of the Gila and Salt River Meridian, Pima County, Arizona, described as follows:

COMMENCING at a 3" ADOT disk in concrete at the East quarter corner of said Section 7, from which the Southeast corner of said Section 7 bears South 0 degrees 17 minutes 18 seconds East, a distance of 2638.89 feet;

Thence along the East line of said Southeast Quarter, South 0 degrees 17 minutes 18 seconds East, a distance of 684.72 feet to a point on the western right-of-way line of Kolb Road, and the southern right-of-way line of Valencia Road;

Thence along the southern right-of-way line of Valencia Road, North 89 degrees 6 minutes 56 seconds West, a distance of 660.11 feet, to the POINT OF BEGINNING;

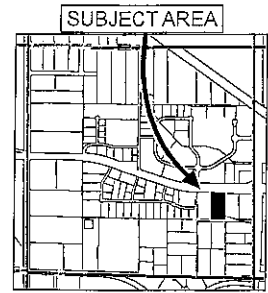
Thence continuing west along the southern right-of-way of Valencia Road, North 89 degrees 6 minutes 56 seconds West, a distance of 155.03 feet;

Thence South 81 degrees 47 minutes 2 seconds East, a distance of 156.72 feet;

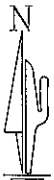
Thence North 0 degrees 17 minutes 7 seconds West, a distance of 20.00 feet, to the POINT OF BEGINNING.

EXHIBIT B-1

SECTION 07
TOWNSHIP 15 SOUTH
RANGE 15 EAST



SECTION 07 G&SRM
PIMA COUNTY, ARIZONA



23011

PIMA COUNTY DEPARTMENT OF TRANSPORTATION
ENGINEERING INFORMATION MANAGEMENT

DRAWING NOT TO SCALE

DRAWN BY: A GRIFFIN

DATE: JAN 2023

LEGEND

 Subject Property

EXHIBIT C

When recorded, return to:
Pima County Real Property Services
201 N. Stone Avenue, 6th Floor
Tucson, AZ 85701-1215

DEED OF EASEMENT

This DEED OF EASEMENT (this "Deed of Easement") is made as of the _____ day of _____, 2023, by 6991, LLC, an Arizona limited liability company ("Grantor"), to Pima County, a political subdivision of the State of Arizona ("Grantee"). Grantor and Grantee may be collectively referred to as the "Parties," or each may be individually referred to as a "Party."

RECITALS

- A. Grantor is the sole owner in fee simple of approximately 4.55 acres of real property located in Pima County, Arizona, in the vicinity of Davis-Monthan Air Force Base, more particularly described in **Exhibit A** attached hereto and generally depicted in the map attached hereto as **Exhibit B**, both of which are incorporated herein by reference (the "Property").
- B. Grantee is a party to that certain Encroachment Management Agreement (the "Agreement"), dated July 21, 2017, concerning Installation Encroachment Management Plan in the vicinity of Davis-Monthan Air Force Base, Tucson, Arizona, which was entered into under the authority of 10 U.S.C. § 2684a. Under the Agreement, Grantee, as the "Eligible Entity," and the United States of America, acting by and through the Secretary of the Air Force (the "Government"), agreed to each share 50% in the acquisition costs, including the sale price, for real property interests such as the interests in the Property acquired pursuant to that Agreement. Grantee and Grantor have agreed that the Government's contribution pursuant to that Agreement and 10 U.S.C. § 2684a, provide the Government with certain rights that may be exercised, as provided in this Deed of Easement.
- C. Grantor is conveying this Deed of Easement on and over the Property in consideration of the modification of a certain other Deed of Easement (the "2018 Deed of Easement") affecting an abutting property, recorded in the Office of the Pima County Recorder on June 14, 2018, at Sequence No. 20181650370, to allow limited uses of the abutting property not originally permitted under the terms of the 2018 Deed of Easement.

EASEMENT

1. **Grant of Easement.** In consideration of the above stated Recitals, and the mutual covenants, terms, and conditions contained in this Easement, Grantor hereby grants and conveys to Grantee a restrictive Easement (the "Easement") on and over the Property, on the terms and conditions set forth in this Deed of Easement.
2. **Purpose.** The purpose of this Easement is to limit the number of persons occupying or working on the Property at any one time, as more particularly set forth in Section 6 ("Employees").
3. **Access to Property.** Grantee may enter the Property upon no less than twenty-four (24) hours' notice in order to determine Grantor's compliance with the terms of this Easement.
4. **Regulation of Property.** Grantee shall have the right to enforce the terms and provisions of this Easement.
5. **Use of Property by Grantor.** Subject to all applicable laws, codes, covenants, restrictions, resolutions, and ordinances, Grantor may use the Property for any purpose consistent with the terms stated and contained in this Easement.
6. **Employees.** Occupancy of the Property is hereby limited to a maximum of forty-five (45) employees. Notwithstanding the foregoing, Grantor is hereby prohibited from assemblage of the Property with other property that has the effect of increasing permitted employee or building densities, or both on the Property or the assembled property.
7. **Runs With the Land.** This Easement is a covenant that runs with the land. All grants, covenants and conditions of this Easement shall inure to the benefit of and be binding upon the successors in interest to Grantee and Grantor.
8. **Enforcement and Remedies.** Upon any breach of a term of this Easement, Grantee may institute suit to enjoin any breach or enforce any term by injunction and require that the Property be restored promptly to the condition required by this Easement. The remedies of Grantee shall be cumulative and shall include any other rights and remedies available to Grantee at law or in equity.
9. **Discretion of Grantee.** Enforcement of the terms of this Easement shall be undertaken at the discretion of Grantee. No failure on the part of Grantee to enforce any term of this Deed of Easement on one occasion shall discharge or invalidate that term or any other term of this

Deed of Easement or affect the enforcement right of Grantee in the event of a subsequent breach or default.

10. Government Rights of Enforcement. Consistent with Sections 8.6.2, 8.6.3 and 8.6.4 of the Agreement referenced above in Recital B, the Government is expressly granted the following, pursuant to the Agreement:

10.1. Should Grantee or Transferee (as applicable) fail to carry out its obligation to monitor and enforce this Easement to assure compliance with its terms, restrictions, and conditions, or allow the Property to be used for a purpose inconsistent with this Easement, especially with respect to failure to limit any development or use of the Property that would otherwise be incompatible with the mission of the Installation, or might interfere, whether directly or indirectly, with current or future military training, testing, or operations on or adjacent to the Installation, the Government, or its assigns, shall have the same rights as Grantee with respect to the Easement, including the right to inspect the Property and enforce such terms, restrictions and conditions.

10.2. Grantee shall notify the Government in writing prior to transferring this Easement pursuant to Section 8.6.3 of the Agreement and the Government, or its assigns, at its option, shall have the right to demand transfer of this Easement to the "United States of America and its assigns" within thirty (30) days from the date of such notification of the Grantee's intent to transfer the Easement (Response Period). If the Government, or its assign, does not notify the Grantee of its intent to demand the transfer of the Easement within the Response Period, then the Grantee shall be free to Transfer the Easement, subject to the terms of this Easement. Any approved deed of transfer shall include the third party rights of the Government as set forth in this section and the requirements that all terms, restrictions, conditions, and purposes set forth in this Easement are to be continued in perpetuity by reference to this Easement.

10.3. Notwithstanding these specified occasions upon which the Government, or its assigns, at its option, has the right to demand transfer of this Easement, the Government shall have the right to demand such transfer of this Easement to the "United States of America and its assigns" at any time for any other purpose it deems necessary to enforce the Prohibited Uses in Section 3 or to fulfill the obligations of the United States.

10.4. In the event the Government exercises these rights, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from Grantor, including, but not limited

to, attorney's fees and expenses related to Grantor's violations. In the event the Government exercises these rights, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee or the Transferee (as applicable), including, but not limited to, attorney's fees and expenses related to Grantee's or the Transferee's (as applicable) violations or failure to enforce the easement against the Grantor.

10.5. In the event of an emergency, the Government or its authorized agent may enter the Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantee and Grantor or Grantor's representative at the earliest practicable time.

10.6. Notices. Any notice, approval, or communication that either Party is required or desires to give related to this Easement must be given in writing and may be served personally, including by recognized courier service, or sent by certified mail, return receipt requested, by the U.S. Postal Service, to:

Grantor:

6991, LLC, an Arizona limited liability company
120 S Houghton Rd Ste 138 PMB 318
Tucson, AZ 85748-2155

Grantee:

Director, Pima County Real Property Services
201 N Stone Ave. 6th Fl
Tucson, AZ 85701

The United States Air Force (as necessary):

Resource Advisors – Michael Stewart, Karl Deutsch, Kimberly Hervey
355th CES/CEIAR
3775 S. Fifth St., Building 4201
Davis-Monthan AFB, AZ 85707

Or to any other address a Party may designate by written notice to the other Party(ies).

11. **Subsequent Transfers.** Grantor further agrees to give written notice, by the means specified in Section 10, to Grantee of the transfer or assignment of any interest in the Property, other than leases, at least twenty (20) days prior to such transfer or assignment. Grantor agrees to make any such transfer or assignment and any leases subject to the terms of this Easement.

Grantor's right to transfer or assign any interest in the Property is in no manner impaired by this Section 11.

12. **Severability.** If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of the invalid provision to persons or circumstances other than those in favor of which it is found to be invalid, as the case may be, shall not be affected.
13. **Rights of Third Parties.** This Easement is being made subject to existing utility and other public and private easements, and rights, restrictions, covenants, and conditions affecting or pertaining to the Property. If Grantor grants any other easements to third parties, it will notify Grantee and require such third party grantees to coordinate their use of the Property with the restrictions set forth herein.
14. **Entire Agreement.** This Easement sets forth the entire agreement of the Parties for the conveyance of this Easement on the Property, and supersedes all prior discussions, negotiations, understandings, or agreements, oral or written, relating to this Easement, all of which are merged into this Deed of Easement.

[SIGNATURE PAGES FOLLOW]

GRANTOR

6991, LLC, an Arizona limited liability company

By: _____

Mark A. Ferganchick

Its: Manager

Dated: _____

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me the _____ day of _____, 20____ by Mark A. Ferganchick, as Manager of 6991, LLC, an Arizona limited liability company, on behalf of the company.

Notary Public

My Commission Expires: _____

EXHIBIT ONLY - NOT FOR EXECUTION

GRANTEE

PIMA COUNTY, a political subdivision of the State of Arizona

By: _____
Jeffrey Teplitsky, Director,
Pima County Real Property Services

Dated: _____

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me the _____ day of _____, 20____ by Jeffrey Teplitsky, Director, Pima County Real Property Services.

Notary Public

My Commission Expires: _____

Agent: GA	File #: Acq-1128	Activity #:	P <input type="checkbox"/> De <input type="checkbox"/> Do <input type="checkbox"/> E <input checked="" type="checkbox"/>
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EXHIBIT D

When recorded, return to:

Pima County Real Property Services
201 N. Stone Avenue, 6th Floor
Tucson, AZ 85701-1215

MODIFICATION OF DEED OF EASEMENT

This Modification of Deed of Easement (this "Modification") is made as of the ____ day of _____, 2023 for mutual and valuable consideration, between **Pima County**, a political subdivision of the State of Arizona ("Grantee"), and **6971, LLC**, an Arizona limited liability company ("Grantor") (Grantee and Grantor may collectively be referred to as "Parties" or each may be referred to as a "Party"), together with the respective successors, assignees, licensees, and invitees of the Parties, for the purpose of modifying that certain Deed of Easement dated June 12, 2018, and recorded in the Office of the Pima County Recorder on June 14, 2018, at Sequence No. 20181650370 (the "2018 Deed of Easement").

RECITALS

- A. Grantor is the sole owner in fee simple of approximately 4.1 acres of real property located in Pima County, Arizona, in the vicinity of Davis-Monthan Air Force Base, more particularly described in Exhibit A attached hereto and generally depicted in the map attached hereto as Exhibit B, both of which are incorporated herein by reference (the "Property").
- B. Grantee is a party to that certain Encroachment Management Agreement (the "Agreement"), dated July 21, 2017, concerning Installation Encroachment Management Plan in the vicinity of Davis-Monthan Air Force Base, Tucson, Arizona, which was entered into under the authority of 10 U.S.C. § 2684a. Under the Agreement, Grantee, as the "Eligible Entity," and the United States of America, acting by and through the Secretary of the Air Force (the "Government"), agreed to each share 50% in the acquisition costs, including the sale price, for real property interests such as the interests in the Property acquired pursuant to that Agreement. Grantee and Grantor have agreed that the Government's contribution pursuant to that Agreement and 10 U.S.C. § 2684a provides the Government with certain rights that may be exercised, as provided in this Modification.
- C. Grantee was previously granted the 2018 Deed of Easement.
- D. Grantor and Grantee now desire to amend the 2018 Deed of Easement to allow uses of the Property not currently permitted under the terms of the 2018 Deed of Easement.

- E. Grantor and Grantee hereby accept the Modification in consideration of Grantee's contemporaneously receiving a Deed of Easement on other property, identified as Assessor Parcel No. 141-03-037B, which Grantor will grant to Grantee by separate instrument and recorded in the Office of the Pima County Recorder.
- F. This modification shall only apply to the 6971, LLC-owned property described and encumbered by the 2018 Deed of Easement.

NOW THEREFORE, by signing below, the undersigned Parties agree as follows:

A. Sections 2, 3, 11 and 12 of the 2018 Deed of Easement are hereby removed and replaced with the following new Sections 2, 3, 11 and 12, and a new Section 16 is added:

2. **Purpose.** *The purpose of this Easement is to limit any development or use of the Property that would be incompatible with the mission of Davis-Monthan Air Force Base, Tucson, Arizona (the "Installation"), or that might interfere, whether directly or indirectly, with current or future military training, testing, or operations on or near the Installation while allowing for the following permitted uses ("County Permitted Uses"):*

- 2.1. *non-motorized ingress and egress for public trails;*
- 2.2. *the construction, installation, maintenance, repair, operation, replacement and removal of underground utility lines and appurtenances;*
- 2.3. *the preservation of natural open space purposes;*
- 2.4. *the erection of signs as compatible with this easement and the County Permitted Uses, conservation, trail purposes, and missions of the Installation;*
- 2.5. *the alteration of the grade and gradient of the Property, including the dislocation and removal of soil and other materials, or the addition of fill materials;*
- 2.6. *the installation, maintenance and replacement of any improvements, structures, landscaping, or stabilizing systems related to the County Permitted Uses;*
- 2.7. *the surface parking of and storage facilities for vehicles, including recreational vehicles, boats and trailers; which includes covered parking structures, solar panels mounted to the parking structures, fencing of the site, improvements common with surface parking and storage of vehicles, indirect lighting that is compatible with the City of Tucson lighting code; and*

2.8. any use ancillary or related to the foregoing uses, that remain compatible with the mission of the Installation, including maintenance, repair, and management of the parking and storage facilities.

3. **Prohibited Uses.** The Grantor is prohibited from engaging in or conducting any activity or use of the Property inconsistent with the terms and conditions of this Easement. Without limiting the generality of the foregoing uses in Section 2, the following activities and uses are expressly prohibited:

3.1. Subdivision or development of any residential or household use. Recreational uses and commercial activities are prohibited on the Property, except as provided in Section 2 hereof and agriculture. "Agriculture" as used here means all methods of production and management of livestock, crops, trees and other vegetation, as well as aquiculture, provided that the use complies with all other limitations in this Section 3. This includes the related activities of tillage, fertilization, pest control, and harvesting as well as the feeding, housing, training and maintenance of animals such as cows, sheep, goats, hogs, horses, and poultry. It does not include the sale of agricultural products on the Property.

3.2. No structure or tree may exceed 80 feet above ground level.

3.3. No lighting shall be permitted that may be dangerous, distracting, or misleading to aircraft operating from the Installation. This type of lighting includes, but is not limited to, strobe lights, non-emergency vehicle rotating beacons, or light sources above 16,000 lumens. Light sources above 16,000 lumens must be angled 15 degrees below the horizon.

3.4. No operations of any type shall be permitted that produce smoke, glare, or other visual hazards, or that encourage large concentrations of birds that may be dangerous for aircraft operating from the Installation. This prohibition shall not include glare resulting from reflected sunlight off of vehicles and other objects allowed on site in accordance with the above Section 2.

3.5. Processing, storage, wholesale trade, or distribution of chemical, petroleum, and rubber products and other hazardous or highly flammable materials, other than fuel in fuel tanks used to power stored vehicles, boats, and trailers.

3.6. Assemblage of the Property with other property that has the effect of increasing permitted employee and/or building densities on the Property or the assembled property.

3.7. Occupancy of the Property by Grantor's employees, agents, tenants and/or customers, other than for the purposes of maintenance, repair, and management of the Property and managing the moving of vehicles on and off the Property as reasonably necessary and consistent with the terms of this Easement.

11. *Notices.* Any notice, approval, or communication that either Party is required or desires to give related to this Modification must be given in writing and may be served personally, including by recognized courier service, or sent by certified mail, return receipt requested, by the U.S. Postal Service, to:

Grantor:

6971, LLC
120 S Houghton Rd Ste 138 PMB 318
Tucson, AZ 85748-2155

Grantee:

Director, Pima County Real Property Services
201 N Stone Ave. 6th Fl
Tucson, AZ 85701

The United States Air Force (as necessary):

Resource Advisors – Michael Stewart, Karl Deutsch, Kimberly Hervey
355th CES/CEIAR
3775 S. Fifth St., Building 4201
Davis-Monthan AFB, AZ 85707

Or to any other address a Party may designate by written notice to the other Party(ies).

12. **Subsequent Transfers.** Grantor further agrees to give written notice, by the means specified in Section 11, to Grantee of the transfer or assignment of any interest in the Property at least twenty (20) days prior to such transfer or assignment. Grantor agrees to make any such transfer or assignment subject to the terms of this Modification.

16. **Effect of Amendment.** In the event of a conflict between the terms of the Easement and the terms of this Modification, the terms of this Modification will control. All other provisions of this Easement will remain in full force and effect and be binding upon the parties.

B. Upon the recording of this Modification, the above modifications shall automatically become effective. All other terms, conditions and obligations of the 2018 Deed of Easement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the undersigned Parties have agreed to the terms and conditions of the above described Modification of Easement as of the first date written above.

[SIGNATURE PAGES FOLLOW]

GRANTOR

6971, LLC, an Arizona limited liability company

By: _____

Mark A. Ferganchick

Its: Manager

Dated: _____

STATE OF ARIZONA)

) ss.

COUNTY OF PIMA)

The foregoing instrument was acknowledged before me the _____ day of _____, 20____ by Mark A. Ferganchick, as Manager of 6971, LLC, an Arizona limited liability company, on behalf of the company.

Notary Public

My Commission Expires: _____

GRANTEE

PIMA COUNTY, a political subdivision of the State of Arizona

By: _____

Jeffrey Teplitsky, Director,
Pima County Real Property Services

Dated: _____

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me the _____ day of _____, 20____ by Jeffrey Teplitsky, Director, Pima County Real Property Services.

Notary Public

My Commission Expires: _____

Agent: GA	File #: Acq-1127	Activity #:	P <input type="checkbox"/> De <input type="checkbox"/> Do <input type="checkbox"/> E <input checked="" type="checkbox"/>
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