



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: December 19, 2017

* = Mandatory, information must be provided

or Procurement Director Award ☐

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

State of Arizona, State Land Department ("ASLD") Acq-0220

***Project Title/Description:**

Amendment to ASLD Right of Way for an additional 1.39 acres along Colossal Cave Rd.

***Purpose:**

Amendment of ASLD Right of Way NO 16-52486-00, is for an additional 1.39 acres along Colossal Cave Rd. for a total of 5.330 acres. This amendment is being done to correct the legal description that was done in the original application 20 years ago. The road has already been constructed. County has applied for and received, subject to Board of Supervisors approval, an Amendment from ASLD that will cure the legal access deficiency.

The total cost pre-paid for the additional ROW \$3,740.00

***Procurement Method:**

Exempt pursuant to Pima County Code 11.04.020

***Program Goals/Predicted Outcomes:**

To ensure County has legal access on Colossal Cave Rd.

***Public Benefit:**

The public will have legal access along Colossal Cave Rd over the State owned portions of Colossal Cave

***Metrics Available to Measure Performance:**

The property was appraised by an independent appraiser retained by ADOT, and an internal adjustment was made to the appraised value by ADOT's staff appraiser, which was reviewed and agreed to by the County's Appraisal Supervisor.

***Retroactive:**

N/A

To: COB. 12-12-17
Ver. 1 (2)
895-31 Addendum

Contract / Award InformationDocument Type: CTN Department Code: PW Contract Number (i.e., 15-123): 18*0091Effective Date: 12/19/2017 Termination Date: 12/18/2042 Prior Contract Number (Synergen/CMS): _____☐ Expense Amount: \$* 0 ☐ Revenue Amount: \$ 0***Funding Source(s) required:**Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No***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 22-73.***Amendment / Revised Award Information**

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____

Amendment No.: _____ AMS Version No.: _____

Effective Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

☐ Expense or ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$ _____Is there revenue included? ☐ Yes ☐ No If Yes \$ _____***Funding Source(s) required:**Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____**Grant/Amendment Information** (for grants acceptance and awards) ☐ Award ☐ Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____

Effective 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: Rita LeonDepartment: Real Property ServicesTelephone: 724-6462

Department Director Signature/Date: _____

Deputy County Administrator Signature/Date: _____

County Administrator Signature/Date: _____

(Required for Board Agenda/Addendum Items)

**DOCUMENT TITLE: State Land Department Amendment to Right of Way No.
16-52486-00**

STATE LAND DEPARTMENT
STATE OF ARIZONA

AMENDMENT TO RIGHT OF WAY

NO. 16-52486-00

The Right of Way between the State of Arizona, Grantor, and _____

PIMA COUNTY

Grantee, by mutual consent, has been amended as follows:

1.39 acres described as M&B THRU SESE in Section 32, Township 15 South, Range 17 East, have been added as requested. See attached Appendix A.

Purpose is amended to read: A Public Road and Underground Sewer.

Additional conditions have been added as required.

This Right of Way Amendment, when executed by the State Land Commissioner (Grantor) and the above-mentioned Grantee and is affixed to the original Right of Way, shall be in full force and effect. All other terms and conditions of the Right of Way apply and shall remain in full force and effect.

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

STATE OF ARIZONA, GRANTEE
Arizona State Land Commissioner

PIMA COUNTY
GRANTEE

By: _____

Date _____

Authorized Signature

Date

Printed Name

Title

Address

City


State Zip

(SEAL)

Recommended to the Board of
Supervisors and the Board of Directors for Approval:

By 
Neil Konigsberg, Manager
Real Property Services

Approved as to form:

By 
Carmine DeBonis Jr.,
Deputy County Administrator-Public Works
12/8/17

 12/8/17
Tobin Rosen, Deputy County Attorney

Approved and accepted by Pima County:

Chair, Pima County Board of Supervisors

Attest:

Julie Castaneda, Clerk of the Board of Supervisors

APPENDIX A

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

RUN DATE: 30 October 2017
RUN TIME: 13:16 PM
PAGE: 1

KE-LEASE# 016-052486-00-000 APPTYPE: AMENDMENT
AMENDMENT#: 0

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| LAND# | LEGAL DESCRIPTION | AUS | ACREAGE |
|------------------------------|-------------------|------|---------|
| 15.0-S-17.0-E-31-10-009-9005 | M&B THRU SE | 0.00 | 1.490 |
| 15.0-S-17.0-E-32-10-030-9013 | M&B THRU S2 | 0.00 | 3.840 |
| | TOTALS | 0.00 | 5.330 |

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These Additional Conditions are attached to and made a part of the Right of Way boiler plate form (the “Boiler Plate”). The term “Section” when used in these Additional Conditions shall be deemed to refer to the Section numbers of the text in the Boiler Plate. The term “Paragraph” when used in these Additional Conditions shall be deemed to refer to the Paragraph numbers of the text in these Additional Conditions. The term “Right of Way” shall mean the Boiler Plate as supplemented by these Additional Conditions.

The terms and conditions set forth in these Amended Additional Conditions to Right of Way No. 16-052486-00-000 (the “Amended Additional Conditions”) amend and supplement the current Arizona State Land Department Right of Way No. 16-052486-00-000 granted by the State of Arizona (“Grantor”) to PIMA COUNTY (“Grantee”), together with the current Additional Conditions applicable thereto (the current Right of Way and current Additional Conditions, collectively, the “Original Grant”, and as amended and supplemented by these Amended Additional Conditions, the “Right of Way”). In the event of a conflict between the Original Grant and these Amended Additional Conditions, these Amended Additional Conditions shall control, but in all other respects, the Original Grant, as amended and supplemented by these Amended Additional Conditions, shall continue in full force and effect.

1. LEGAL DESCRIPTION, RENT AND PURPOSE

1.1 A legal description and/or a visual depiction of this Amended Right of Way is/are detailed in EXHIBIT A attached hereto. Subject to Grantor’s rules and policies then in place, and as a result of construction-related restrictions, Grantor and Grantee may agree to modify the legal description by the Grantee submitting “as built” or “proposed realignment” legal descriptions, depending on the situation, to Grantor for Grantor’s review. If approved by Grantor, and additional acreage is impacted, Grantee agrees to pay an appraised or pro-rated charge as Grantor determines is appropriate. No refund will be made for a reduction in acreage.

1.2 Grantor reserves the right to grant additional access rights, or any other rights not in conflict with the rights granted herein, to other parties at the Grantor’s sole discretion.

1.3 This Right of Way Amendment is for the purpose of a Public Roadway and does not permit any underground or above ground facilities without proper rights authorized or issued by Grantor, assignees or its successors with the exception of water and sewer.

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1.3.1 This Right of Way prohibits the erection of any type advertising sign(s) or monument structure(s) without proper rights authorized or issued by Grantor, assignees or its successors.

2. CONSTRUCTION, MAINTENANCE AND OPERATION

2.1 Grantee is responsible for complying with all federal, state and local guidelines in regards to the construction, maintenance and operation of this Right of Way grant and its associated appurtenances.

2.2 Grantee shall conduct all construction and maintenance activities in a manner that will minimize disturbance to surface features affecting adjacent land values, including, but not limited to, vegetation, drainage channels and stream banks.

2.3 Grantee shall be responsible for controlling noxious weeds as listed by the Arizona Department of Agriculture for the term of this Right of Way. Grantor recommends Grantee review Arizona Department of Agriculture website for prohibited and restricted noxious weed rules and regulations.

2.4 Grantee agrees that any rubbish or debris from construction and maintenance work shall be removed and properly disposed of at its expense. Disposal of construction-related and maintenance-related materials on State Trust land is strictly prohibited.

2.5 Specific sites where construction and maintenance equipment and vehicles shall not be allowed (e.g. archaeological sites, areas with threatened or endangered species, or fragile watersheds) shall be clearly marked onsite by the Grantee prior to the beginning of any construction, maintenance or other ground disturbing activities. Grantee shall take any and all steps necessary to ensure that these sites are not touched.

2.6 All equipment shall be removed from the site within seven (7) days of project completion.

2.7 Grantee shall be responsible for weed control on disturbed areas within the limits of this Right of Way, and shall be responsible for consultation with the Grantor and/or local authorities for acceptable weed control methods.

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2.8 For construction after Commencement Date of this Right of Way Amendment: Prior to commencement of construction Grantee shall submit and receive Grantor approval for a plan to restore and rehabilitate disturbed areas remaining once construction has been completed. The plan shall include, but not be limited to, reseeded, reforestation, erosion control, and watershed protection measures.

2.9 For ground disturbance after Commencement Date of this Right of Way Amendment: All rock brought to the surface along with topsoil and overburden from the affected State Trust lands shall be salvaged and stockpiled separately in a manner that replacement shall utilize one hundred (100%) percent of the materials upon completion of construction. Excess rock unsuitable for scattering shall be disposed of in a manner and location that is authorized by the Grantor.

2.10 Grantee shall maintain the Right of Way grant area in the manner described above during the term of this easement. Grantee agrees to complete any necessary restoration and rehabilitation to the satisfaction of the Grantor within ninety (90) days of written notification of non-compliance, or such longer period of time as mutually determined to be necessary to restore and/or rehabilitate subject land.

3. ENVIRONMENTAL MATTERS AND INDEMNITY

The following conditions shall supplement the terms and provisions governing environmental matters as set forth in the Right of Way boiler to which these Conditions are stated below.

3.1 For purposes of this Right of Way, the term "Environmental Laws" shall include but not be limited to any relevant federal, state or local environmental laws, and the regulations, rules and ordinances, relating to environmental matters, and publications promulgated pursuant to the local, state, and federal laws and any rules or regulations relating to environmental matters. For the purpose of this Right of Way, the term "Regulated Substances" shall include but not be limited to substances defined as "regulated substance", "solid waste", "hazardous waste", "hazardous materials", "hazardous substances", "toxic materials", "toxic substances", "inert materials", "pollutants", "toxic pollutants", "herbicides", "fungicides", "rodenticides", "insecticides", "contaminants", "pesticides", "asbestos", "environmental nuisance", "criminal littering", or "petroleum products" as defined in Environmental Laws.

3.2 Grantee shall strictly comply with all Environmental Laws, including, without limitation, water quality, air quality; and handling, transportation, storage, treatment, or

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disposal of any Regulated Substance on, under, or from the Subject Land. Without limiting the foregoing, compliance includes that Grantee shall: (1) comply with all reporting obligations imposed under Environmental Laws; (2) obtain and maintain all permits required by Environmental Laws, and provide a copy to Grantor within ten (10) business days of receipt of the Right of Way; (3) provide copies of all documentation required by Environmental Laws to Grantor within ten (10) business days of Grantee's submittal and/or receipt of the documentation; (4) during the term of Right of Way, provide copies of all information it receives or obtains regarding any and all environmental matters relating to the Subject Land, including but not limited to environmental audits relating to the Subject Land regardless of the reason for which the information was obtained or whether or not the information was required by Environmental Laws; (5) prevent treatment, storage, disposal, handling or use of any Regulated Substances within the Subject Land without prior written authorization from Grantor.

3.3 Grantee at all times shall employ or designate an existing employee (the "Designated Compliance Officer") who is responsible for knowing all Environmental Laws affecting Grantee and Grantee's business and monitoring Grantee's continued compliance with applicable Environmental Laws. Upon request by Grantor, Grantee shall make the Designated Compliance Officer available to discuss Grantee's compliance, answer any questions, and provide such reports and confirming information as Grantor may reasonably request.

3.4 At any time, Grantor may request Grantee to provide an environmental audit of the Subject Land performed by an Arizona registered professional engineer or an Arizona registered geologist. Grantee shall pay the entire cost of the audit.

3.5 Hazardous material generated (motor oil, paint, etc.) shall be disposed of properly or used in a way which will minimize impact on vegetation.

3.6 At any time, during the term of the Right of Way, Grantor may require Grantee to obtain one Phase I environmental assessment of the Subject Land performed by an Arizona registered professional engineer or an Arizona registered geologist. If based upon the Phase I environmental assessment or its own independent investigation, Grantor identifies any possible violation of Environmental Laws or the terms of this Right of Way, Grantor may require Grantee to conduct additional environmental assessments as Grantor deems appropriate for the purpose of ensuring that the Subject Land are in compliance with Environmental Laws. The Phase I assessment, or any other assessment required by Grantor, shall be obtained for the benefit of both Grantee and Grantor. A copy of the Phase I report

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shall be provided both to Grantee and Grantor. Grantor, in its sole discretion, shall have the right to require Grantee to perform additional assessments of any damage to the Subject Land arising out of any violations of Environmental Laws. If Grantee fails to obtain any assessments required by Grantor, Grantee shall pay the entire costs of any and all assessments required by Grantor, notwithstanding the expiration or termination of the Right of Way.

3.7 Prior to the termination of the Right of Way, Grantee shall restore the Subject Land by removing any and all Regulated Substances. In addition, the restoration shall include, but not be limited to, removal of all waste and debris deposited by Grantee. If the Subject Land or any portions thereof are damaged or destroyed from the existence or presence of any Regulated Substance or if the Subject Land or any portions thereof are damaged or destroyed in any way relating to or arising out of the removal, treatment, storage, disposition, mitigation, cleanup or remedying of any Regulated Substance, Grantee shall arrange, at its expense, for the repair, removal, remediation, restoration, and reconstruction to the Subject Land to the original condition existing on the date that Grantee first occupied the Parcel, to the satisfaction of Grantor. In any event, any damage, destruction, or restoration by Grantee shall not relieve Grantee from its obligations and liabilities under this Right of Way. Grantee's restoration obligations under this Section shall survive the expiration or the termination of the Right of Way.

3.8 Grantee shall defend, indemnify and hold Grantor harmless from and against any and all liability, obligations, losses, damages, penalties, claims, environmental response and cleanup costs and fines, and actions, suits, costs, taxes, charges, expenses and disbursements, including legal fees and expenses of whatever kind or nature (collectively, "claims" or "damages") imposed on, incurred by, or reserved against Grantor in any way relating to or arising out of any non-compliance with any Environmental Laws, the existence or presence of any Regulated Substance, on, under, or from the Subject Land, and any claims or damages in any way relating to or arising out of the removal, treatment, storage, disposition, mitigation, cleanup or remedying of any Regulated Substance on, under, or from the Subject Land by Grantee, its agents, contractors, or subcontractors.

3.9 This indemnity shall include, without limitation, claims or damages arising out of any and all violations of Environmental Laws regardless of any real or alleged fault, negligence, willful misconduct, gross negligence, breach of warranty, or strict liability on the part of any of the indemnitees. This indemnity shall survive the expiration or termination of this Right of Way and/or transfer of all or any portion of the Subject Land and shall be governed by the laws of the State of Arizona.

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3.10 In the event any action or claim is brought or asserted against Grantor which is or may be covered by this indemnity, Grantee shall fully participate, at Grantee's expense, in the defense of the action or claim including but not limited to the following: (1) the conduct of any required cleanup, removal or remedial actions and/or negotiations, (2) the conduct of any proceedings, hearings, and/or litigation, and (3) the negotiation and finalization of any agreement or settlement. Grantor shall retain the right to make all final decisions concerning the defense. Grantee's obligations to participate in the defense under this Section shall survive the expiration or termination of the Right of Way.

4. CULTURAL RESOURCES AND NATIVE PLANTS

4.1 If any ground disturbing activities associated with this Right of Way are to occur on Arizona State Trust land in areas not previously subjected to cultural resources survey, additional cultural resources inventory will be required PRIOR TO any such disturbance. Ground disturbing activities include, but are not limited to; blading, grading, or widening roads, pole replacement, pull-sites, temporary construction easements, or any other activity that will disturb the topsoil.

4.2 Should previously undocumented cultural resources be identified during any project-related construction or maintenance activities, all such work shall cease in the immediate vicinity of the remains, and pursuant to A.R.S. §41-844, the Director of the Arizona State Museum shall be immediately notified; the Manager of the Cultural Resources Management Program at Arizona State Land Department (ASLD) shall also be notified. Should human remains or funerary objects be identified, the Repatriation Coordinator of the Arizona State Museum shall be notified immediately; the Manager of the Cultural Resources Management Program at ASLD shall also be notified.

4.3 Grantee shall supply Grantor with any documentation required to consult with the State Historic Preservation Office, as required pursuant to the State Historic Preservation Act (A.R.S. § 41-861 et seq).

4.4 Prior to any ground disturbance, and at the request of Grantor, Grantee agrees to conduct and submit a plant inventory/plant salvage plan to the Grantor. Payment will be required prior to any ground disturbance for any flora cut, removed and/or destroyed.

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4.5 If vegetation is authorized by Grantor to be removed and/or destroyed, and prior to any ground disturbance, Grantee agrees to file the appropriate Notice of Intent to Clear Land in accordance with A.R.S. § 3-905 Destruction of Native Plants by State.

4.6 Grantee shall preserve or relocate all protected plants, if viable and feasible, on or adjacent to the work site that will not interfere with the work required.

4.7 Grantee shall only remove protected plants when specifically authorized to do so, and avoid damaging vegetation that will remain in place. If the Grantee or its contractors are authorized to remove any protected plants from State Trust land for replanting off of State Trust land, a permit from the Department of Agriculture is required.

4.8 Grantee shall contact the Arizona Department of Agriculture for further information or permit requirements related to native protected plants.

4.8.1 A survey may be required to determine if protected plants are present and if plants must be salvaged. Grantee shall contact the Arizona Department of Agriculture at least sixty (60) days before commencement of any salvage work.

4.9 Grantee shall minimize the removal of existing vegetation within the project area to the greatest extent possible.

4.10 Grantee shall salvage or replant cactus and other protected plants.

4.11 Grantee is prohibited to blade, scrape or remove any existing vegetation without authorization from Grantor.

5. EXISTING LESSEES

5.1 Grantee shall keep all gates closed and ensure its contractors do the same. Grantor reserves the right to require cattle guards if Grantor determines gates are being left open or fencing has been removed or damaged by the Grantee, its employees or contractors.

5.2 Any grazing-related improvements removed or damaged due to construction, operation and maintenance of this Right of Way shall be replaced and/or reconstructed immediately. Cost of replacement and reconstruction shall be the responsibility of the Grantee.

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5.3 Grantee shall provide Grantor with documentation of the surface lessee's consent prior to making any alterations to existing improvements.

5.4 If construction or maintenance occurs during periods of livestock grazing, Grantee will take necessary measures to insure livestock protection and containment.

5.4.1 Grantee agrees to notify Grazing Lessee(s) 30 days prior to beginning construction or maintenance, and inquire as to the presence/absence of livestock.

6. ADDITIONAL SPECIFIC COMPLIANCE REQUIREMENTS

6.1 Current records show that the species listed under Threatened/Endangered Species within EXHIBIT B of these Additional Conditions have been documented as occurring in the project vicinity.

6.2 Current records show that additional specific compliance requirements exist within the project vicinity and are identified on EXHIBIT B of these Additional Conditions.

7. MISCELLANEOUS

7.1 The Grantee, or its successors or assigns, shall relocate that portion(s) of the Public Roadway, and any associated appurtenances or portion(s) thereof associated with or affecting Rights of Way (together, the "Rights of Way"), if any Lessee, Grantee and/or Permittee of the Leases, Rights of Way and/or Permits determines in its reasonable discretion that relocation is necessary to effectuate the purpose(s) of Leases, Rights of Way and/or Permits during the term of this Right of Way. Grantee shall not be responsible for any costs associated with the relocation of its Public Roadway or any associated appurtenances.

7.2 Grantee shall not alter nor cause ponding, nor any damage up or down stream of any water crossing.

7.3 No altering of existing drainages or drainage structures is authorized under this instrument.

7.4 If any provision or agreement of this Right of Way is found invalid by any tribunal, such invalidity shall not affect the validity of the remaining provisions hereof.

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7.5 The following provision shall be deemed added at the end of Paragraph 13 of the Easement Conditions of the Right of Way to which these Additional Conditions are attached as if set forth therein verbatim:

“Any violation by Grantee of any of the terms of this Right of Way constitutes a breach. Upon a breach by Grantee which is not cured within sixty (60) days after the date a notice of breach is sent by certified mail to Grantee to the most recent address for Grantee as shown in the files of Grantor, this Right of Way shall become void and the right to use the Subject Land and all of the rights of Grantee hereunder shall revert to Grantor at the expiration of the aforesaid sixty (60) day period.”

7.6 Attached hereto as EXHIBIT B is an insurance rider which shall supplement the terms and provisions governing insurance as set forth in the Right of Way form to which these Additional Conditions are attached. Grantor reserves the right to amend EXHIBIT B as and when the Arizona Department of Administration requires revisions to the insurance requirements applicable to Arizona State Trust Land.

8. EXHIBITS

8.1 The following exhibits are attached to these Additional Conditions and made a part hereof:

| | |
|------------------|---|
| <u>EXHIBIT A</u> | Legal Description and/or Visual Depiction of Right of Way |
| <u>EXHIBIT B</u> | Additional Specific Compliance Requirements |
| <u>EXHIBIT C</u> | Insurance Rider |

BY SIGNATURE BELOW, ALL TERMS ARE
AGREED TO AND ACCEPTED BY GRANTEE

By: _____

Title: _____

Date: _____

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EXHIBIT A - LEGAL DESCRIPTION AND/OR VISUAL DEPICTION OF RIGHT OF WAY

LEGAL DESCRIPTION COLOSSAL CAVE ACCESS ROAD

A 30.00 foot wide strip of land being a portion of Sections 31 and 32, Township 15 South, Range 17 East, Gila and Salt River Meridian, Pima County, Arizona, lying 15.00 feet on each side of the following described centerline:

COMMENCING at the southeast corner of said Section 32;

THENCE South $89^{\circ}20'33''$ West along the south line of said Section 32, 206.13 feet to a point on a curve to which a radial line bears South $15^{\circ}04'45''$ West, said point being the POINT OF BEGINNING of said centerline;

THENCE westerly along a curve concave to the north, having a radius of 491.98 feet, through a central angle of $03^{\circ}24'05''$, and arc distance of 29.21 feet to a point of tangency;

THENCE North $71^{\circ}31'10''$ West, 178.08 feet to a point of curvature;

THENCE westerly and northwesterly along a curve concave to the northeast, having a radius of 75.98 feet, through a central angle of $47^{\circ}18'55''$, and arc distance of 62.74 feet to a point of reverse curvature;

THENCE northwesterly along said curve concave to the southwest, having a radius of 217.74 feet, through a central angle of $22^{\circ}33'41''$, an arc distance of 85.74 feet to a point of tangency;

THENCE North $46^{\circ}46'01''$ West, 81.07 feet to a point of curvature;

THENCE northwesterly along a curve concave to the southwest, having a radius of 296.65 feet, through a central angle of $20^{\circ}06'04''$, an arc distance of 104.07 feet to a point of reverse curvature;

THENCE northwesterly along a curve concave to the northeast, having a radius of 631.83 feet, through a central angle of $12^{\circ}37'23''$, an arc distance of 139.20 feet to a point of tangency;

THENCE North $54^{\circ}14'42''$ West, 74.63 feet to a point of curvature;

THENCE northwesterly and westerly, along a curve concave to the south, having a radius of 126.06 feet, through a central angle of $54^{\circ}07'36''$, an arc distance of 119.09 feet to a point of tangency;

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EXHIBIT A - LEGAL DESCRIPTION AND/OR VISUAL DEPICTION OF RIGHT OF WAY

THENCE South $71^{\circ}37'41''$ West, 30.23 feet to a point of curvature;

THENCE westerly and southwesterly along a curve concave to the southeast, having a radius of 787.71 feet, through a central angle of $15^{\circ}32'26''$, an arc distance of 213.65 feet to a point of reverse curvature;

THENCE southwesterly and westerly along a curve concave to the north, having a radius of 154.45 feet, through a central angle of $27^{\circ}45'28''$, an arc distance of 74.83 feet to a point of reverse curvature;

THENCE westerly and southwesterly along a curve concave to the southeast, having a radius of 210.32 feet, through a central angle of $50^{\circ}46'39''$, an arc distance of 186.39 feet to a point of tangency;

THENCE South $33^{\circ}04'08''$ West, 21.55 feet to a point of curvature;

THENCE southwesterly and westerly along a curve concave to the north, having a radius of 91.21 feet, through a central angle of $74^{\circ}40'36''$, an arc distance of 118.88 feet to a point of reverse curvature;

THENCE westerly and southwesterly along a curve concave to the south, having a radius of 114.47 feet, through a central angle of $40^{\circ}55'08''$, an arc distance of 81.75 feet to a point of reverse curvature;

THENCE southwesterly and westerly along a curve concave to the north, having a radius of 148.19 feet, through a central angle of $32^{\circ}21'11''$, an arc distance of 83.68 feet to a point of tangency;

THENCE North $80^{\circ}49'13''$ West, 41.99 feet to a point of curvature;

THENCE westerly along a curve concave to the south, having a radius of 3171.91 feet, through a central angle of $05^{\circ}13'36''$, an arc distance of 289.34 feet to a point of reverse curvature;

THENCE westerly and northwesterly along a curve concave to the northeast, having a radius of 56.63 feet, through a central angle of $56^{\circ}35'43''$, an arc distance of 55.93 feet to a point of tangency;

THENCE North $29^{\circ}27'06''$ West, 47.58 feet to a point of curvature;

THENCE northwesterly and westerly along a curve concave to the southwest, having a radius of 263.89 feet, through a central angle of $48^{\circ}01'26''$, an arc distance of 221.19 feet to a point of tangency;

THENCE North $77^{\circ}28'32''$ West, 596.48 feet to a point of curvature;

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EXHIBIT A - LEGAL DESCRIPTION AND/OR VISUAL DEPICTION OF RIGHT OF WAY

THENCE westerly and northwesterly along a curve concave to the northeast, having a radius of 221.51 feet, through a central angle of $24^{\circ}35'52''$, an arc distance of 95.10 feet to a point of reverse curvature;

THENCE northwesterly and westerly along a curve concave to the south, having a radius of 95.90 feet, through a central angle of $37^{\circ}17'35''$, an arc distance of 62.42 feet to a point of tangency;

THENCE South $89^{\circ}49'47''$ West, 53.69 feet to a point of curvature;

THENCE westerly and northwesterly along a curve concave to the northeast, having a radius of 89.79 feet, through a central angle of $45^{\circ}57'10''$, an arc distance of 72.01 feet to a point of reverse curvature;

THENCE northwesterly and westerly along a curve concave to the south, having a radius of 87.04 feet, through a central angle of $46^{\circ}37'32''$, an arc distance of 70.83 feet to a point of tangency;

THENCE South $89^{\circ}09'25''$ West, 59.51 feet to a point of curvature;

THENCE westerly and northwesterly along a curve concave to the north, having a radius of 63.45 feet, through a central angle of $40^{\circ}41'50''$, an arc distance of 45.07 feet to a point of reverse curvature;

THENCE northwesterly and westerly along a curve concave to the southwest, having a radius of 127.48 feet, through a central angle of $32^{\circ}01'01''$, an arc distance of 71.24 feet to a point of tangency;

THENCE North $82^{\circ}09'50''$ West, 23.95 feet to a point of curvature;

THENCE westerly and northwesterly along a curve concave to the north, having a radius of 345.25 feet, through a central angle of $27^{\circ}15'13''$, an arc distance of 164.22 feet to a point of reverse curvature;

THENCE northwesterly and westerly along a curve concave to the south, having a radius of 235.65 feet, through a central angle of $39^{\circ}34'18''$, an arc distance of 162.75 feet to a point of tangency;

THENCE South $85^{\circ}31'05''$ West, 67.97 feet to a point of curvature;

THENCE westerly and northwesterly along a curve concave to the north, having a radius of 115.08 feet, through a central angle of $37^{\circ}42'00''$, an arc distance of 75.72 feet to a point of reverse curvature;

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EXHIBIT A - LEGAL DESCRIPTION AND/OR VISUAL DEPICTION OF RIGHT OF WAY

THENCE northwesterly and westerly along a curve concave to the south, having a radius of 135.03 feet, through a central angle of $30^{\circ}37'23''$, an arc distance of 72.17 feet to a point of tangency;

THENCE North $87^{\circ}24'15''$ West, 24.03 feet to a point of curvature;

THENCE westerly and northwesterly along a curve concave to the north, having a radius of 189.88 feet, through a central angle of $32^{\circ}20'45''$, an arc distance of 107.19 feet to a point of reverse curvature;

THENCE northwesterly and westerly along a curve concave to the south, having a radius of 116.06 feet, through a central angle of $44^{\circ}53'44''$, an arc distance of 90.94 feet to a point of reverse curvature;

THENCE westerly along a curve concave to the north, having a radius of 220.18 feet, through a central angle of $28^{\circ}21'39''$, an arc distance of 108.99 feet to a point of tangency;

THENCE North $71^{\circ}35'34''$ West, 534.65 feet to a point of curvature;

THENCE westerly and northwesterly along a curve concave to the northeast, having a radius of 606.80 feet, through a central angle of $20^{\circ}04'16''$, an arc distance of 212.57 feet to a point of reverse curvature;

THENCE northwesterly and westerly along a curve concave to the south, having a radius of 242.76 feet, through a central angle of $38^{\circ}12'01''$, an arc distance of 161.85 feet to a point of tangency;

THENCE North $89^{\circ}43'19''$ West, 159.50 feet to a point of curvature;

THENCE westerly along a curve concave to the north, having a radius of 316.64 feet, through a central angle of $22^{\circ}10'07''$, an arc distance of 122.51 feet to a point on the west line of Section 32 from which the southwest corner of said Section 32 bears South $00^{\circ}49'32''$ East, 1257.38 feet distant;

THENCE continuing westerly and northwesterly along said curve concave to the northeast, having a radius of 316.64 feet, through a central angle of $18^{\circ}54'53''$, an arc distance of 104.53 feet to a point of tangency;

THENCE North $48^{\circ}38'20''$ West, 33.48 feet to a point of curvature;

THENCE northwesterly and westerly along a curve concave to the south, having a radius of 160.33 feet, through a central angle of $48^{\circ}44'43''$, an arc distance of 136.40 feet to a point of reverse curvature;

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EXHIBIT A - LEGAL DESCRIPTION AND/OR VISUAL DEPICTION OF RIGHT OF WAY

THENCE westerly along a curve concave to the north, having a radius of 297.96 feet, through a central angle of $18^{\circ}53'02''$, an arc distance of 98.20 feet to a point of tangency;

THENCE North $78^{\circ}30'01''$ West, 392.92 feet to a point of curvature;

THENCE westerly along a curve concave to the north, having a radius of 1161.16 feet, through a central angle of $06^{\circ}57'49''$, an arc distance of 141.12 feet to a point of reverse curvature;

THENCE westerly along a curve concave to the south, having a radius of 855.50 feet, through a central angle of $12^{\circ}21'33''$, an arc distance of 184.54 feet to a point of tangency;

THENCE North $83^{\circ}53'45''$ West, 73.26 feet to a point of curvature;

THENCE westerly and northwesterly along a curve concave to the northeast, having a radius of 95.15 feet, through a central angle of $42^{\circ}40'07''$, an arc distance of 70.86 feet to a point of tangency;

THENCE North $41^{\circ}13'38''$ West, 217.58 feet to a point of curvature;

THENCE northwesterly and northerly along a curve concave to the east, having a radius of 146.11 feet, through a central angle of $51^{\circ}02'52''$, an arc distance of 130.18 feet to a point of reverse curvature;

THENCE northerly and northwesterly along a curve concave to the southwest, having a radius of 85.73 feet, through a central angle of $72^{\circ}23'11''$, an arc distance of 108.31 feet to a point of tangency;

THENCE North $62^{\circ}33'56''$ West, 17.90 feet to a point on the centerline of Pistol Hill Road according to the map recorded in Record of Survey Book 9 at Page 6, Records of Pima County, Arizona, said point being the POINT OF TERMINATION of said centerline.

EXCEPT any portion lying within Pistol Hill Road as noted in Record of Survey Book 9 at Page 6, Records of Pima County, Arizona.

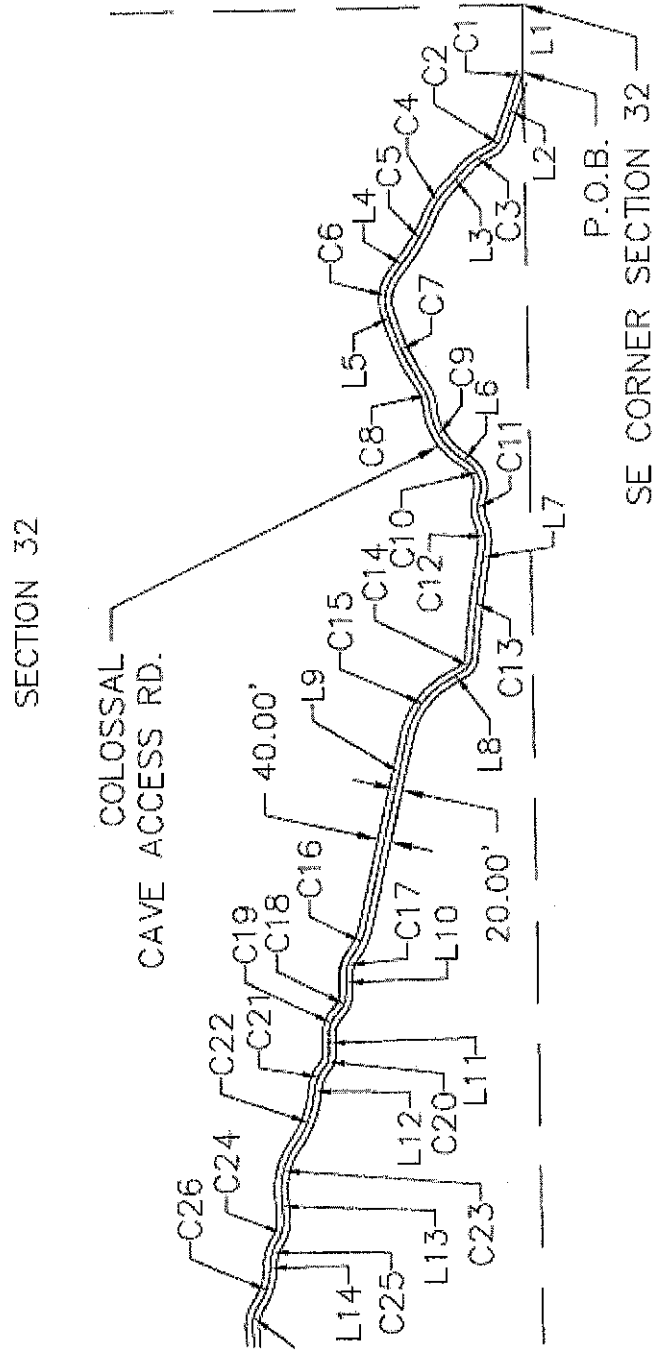
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EXHIBIT A - LEGAL DESCRIPTION AND/OR VISUAL DEPICTION OF RIGHT OF WAY

DEPICTION OF EXHIBIT "A"



PIMA COUNTY SURVEY

A PORTION OF SECTIONS 31 & 32, TOWNSHIP 15 SOUTH, RANGE 17 EAST, GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA.

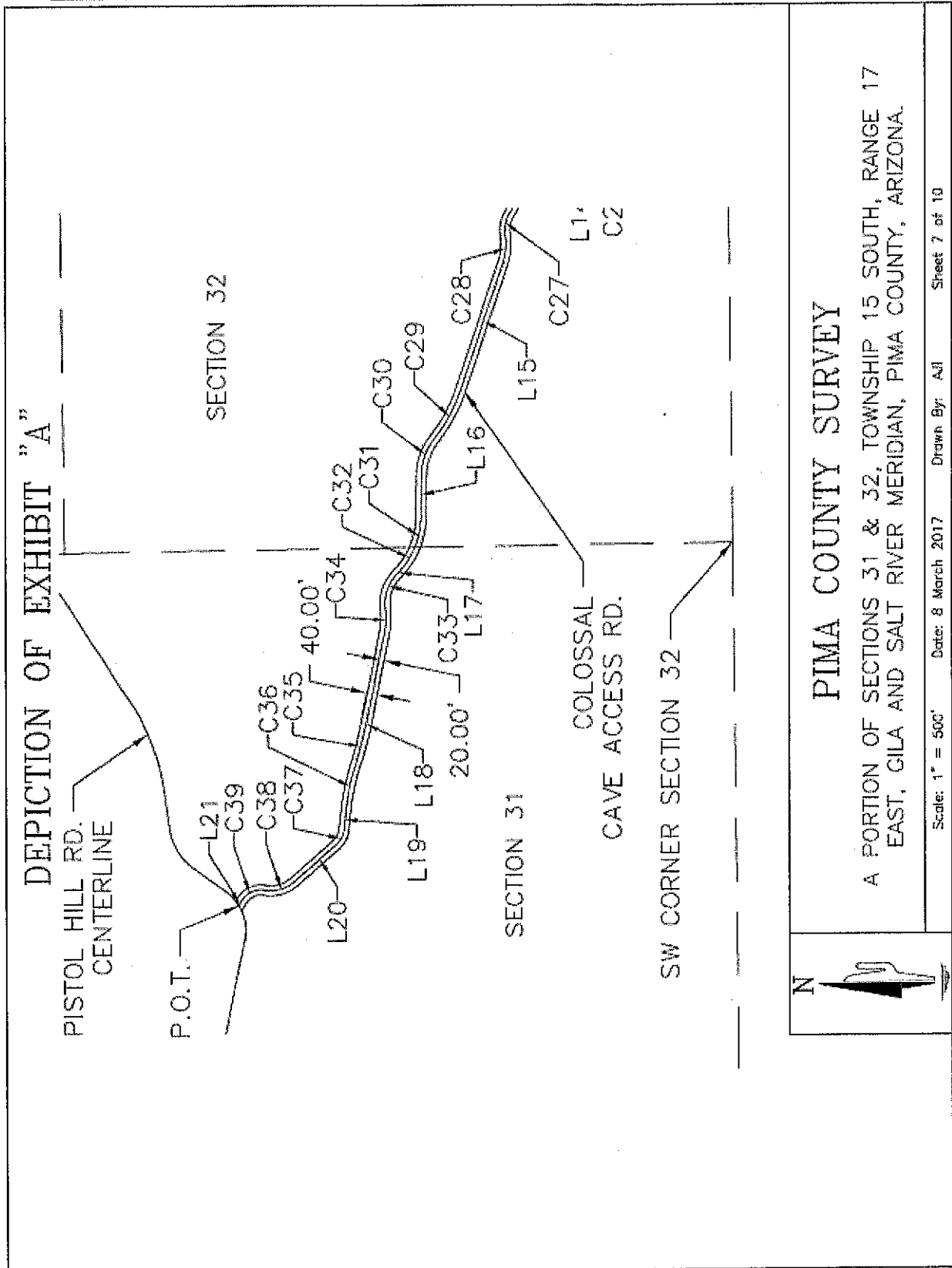
Scale: 1" = 500' Date: 8 March 2017 Drawn By: AJL Sheet 6 of 10

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EXHIBIT A - LEGAL DESCRIPTION AND/OR VISUAL DEPICTION OF RIGHT OF WAY



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EXHIBIT A - LEGAL DESCRIPTION AND/OR VISUAL DEPICTION OF RIGHT OF WAY

DEPICTION OF EXHIBIT "A"

| Line Table | | |
|------------|---------|---------------|
| Line # | Length | Direction |
| L1 | 206.13' | S89° 20' 33"W |
| L2 | 178.08' | N71° 31' 10"W |
| L3 | 81.07' | N46° 46' 01"W |
| L4 | 74.63' | N54° 14' 42"W |
| L5 | 30.23' | S71° 37' 41"W |
| L6 | 21.55' | S33° 04' 08"W |
| L7 | 41.99' | N80° 49' 13"W |
| L8 | 47.58' | N29° 27' 06"W |
| L9 | 596.48' | N77° 28' 32"W |
| L10 | 53.69' | S89° 49' 47"W |
| L11 | 59.51' | S89° 09' 25"W |

| Line Table | | |
|------------|---------|---------------|
| Line # | Length | Direction |
| L12 | 23.95' | N82° 09' 50"W |
| L13 | 67.97' | S85° 31' 05"W |
| L14 | 24.03' | N87° 24' 15"W |
| L15 | 534.65' | N71° 35' 34"W |
| L16 | 159.50' | N89° 43' 19"W |
| L17 | 33.48' | N48° 38' 20"W |
| L18 | 392.92' | N78° 30' 01"W |
| L19 | 73.26' | N83° 53' 45"W |
| L20 | 217.58' | N41° 13' 38"W |
| L21 | 17.90' | N62° 33' 56"W |



PIMA COUNTY SURVEY

A PORTION OF SECTIONS 31 & 32, TOWNSHIP 15 SOUTH, RANGE 17
EAST, GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA.

Scale: 1" = 500'

Date: 8 March 2017

Drawn By: AJ

Sheet B of 10

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EXHIBIT A - LEGAL DESCRIPTION AND/OR VISUAL DEPICTION OF RIGHT OF WAY

DEPICTION OF EXHIBIT "A"

| Curve Table | | | |
|-------------|--------|--------|-----------|
| Curve # | Length | Radius | Delta |
| C1 | 29.21 | 491.98 | 3°24'06" |
| C2 | 62.74 | 75.98 | 47°18'42" |
| C3 | 85.74 | 217.74 | 22°33'41" |
| C4 | 104.07 | 296.65 | 20°06'01" |
| C5 | 139.20 | 631.83 | 12°37'23" |
| C6 | 119.09 | 126.06 | 54°07'40" |
| C7 | 213.65 | 787.71 | 15°32'25" |
| C8 | 74.83 | 154.45 | 27°45'34" |
| C9 | 186.39 | 210.32 | 50°46'36" |
| C10 | 118.88 | 91.21 | 74°40'39" |

| Curve Table | | | |
|-------------|--------|---------|-----------|
| Curve # | Length | Radius | Delta |
| C11 | 81.75 | 114.47 | 40°55'06" |
| C12 | 83.68 | 148.19 | 32°21'14" |
| C13 | 289.34 | 3171.91 | 5°13'35" |
| C14 | 55.93 | 56.63 | 56°35'15" |
| C15 | 221.19 | 263.89 | 48°01'29" |
| C16 | 95.10 | 221.51 | 24°35'55" |
| C17 | 62.42 | 95.90 | 37°17'35" |
| C18 | 72.01 | 89.79 | 45°57'01" |
| C19 | 70.83 | 87.04 | 46°37'31" |
| C20 | 45.07 | 63.45 | 40°41'55" |

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PIMA COUNTY SURVEY

A PORTION OF SECTIONS 31 & 32, TOWNSHIP 15 SOUTH, RANGE 17
EAST, GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA.

Scale: 1" = 500' Date: 8 March 2017 Drawn By: All Sheet 9 of 10

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EXHIBIT A - LEGAL DESCRIPTION AND/OR VISUAL DEPICTION OF RIGHT OF WAY

DEPICTION OF EXHIBIT "A"

| Curve Table | | | |
|-------------|--------|--------|-----------|
| Curve # | Length | Radius | Delta |
| C21 | 71.24 | 127.48 | 32°01'08" |
| C22 | 164.22 | 345.25 | 27°15'11" |
| C23 | 162.75 | 235.65 | 39°34'15" |
| C24 | 75.72 | 115.08 | 37°41'58" |
| C25 | 72.17 | 135.03 | 30°37'23" |
| C26 | 107.19 | 189.88 | 32°20'39" |
| C27 | 90.94 | 116.06 | 44°53'41" |
| C28 | 108.99 | 220.18 | 28°21'42" |
| C29 | 212.57 | 606.80 | 20°04'17" |
| C30 | 161.85 | 242.76 | 38°11'58" |

| Curve Table | | | |
|-------------|--------|---------|-----------|
| Curve # | Length | Radius | Delta |
| C31 | 122.51 | 316.64 | 22°10'05" |
| C32 | 104.53 | 316.64 | 18°54'53" |
| C33 | 136.40 | 160.33 | 48°44'39" |
| C34 | 98.20 | 297.96 | 18°53'00" |
| C35 | 141.12 | 1161.16 | 6°57'48" |
| C36 | 184.54 | 855.50 | 12°21'33" |
| C37 | 70.86 | 95.15 | 42°40'09" |
| C38 | 130.18 | 146.11 | 51°02'56" |
| C39 | 108.31 | 85.73 | 72°23'12" |



PIMA COUNTY SURVEY

A PORTION OF SECTIONS 31 & 32, TOWNSHIP 15 SOUTH, RANGE 17
EAST, GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

Scale: 1" = 500'

Date: 8 March 2017

Drawn By: AJ

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EXHIBIT B

ADDITIONAL SPECIFIC COMPLIANCE REQUIREMENTS

1. THREATENED / ENDANGERED SPECIES

The Arizona Game of Fish Department's Heritage Data Management System has been accessed and current records show that one or more listed, proposed, or candidate species or Critical Habitat (Designated or Proposed) have been documented in the vicinity of this Right of Way.

1.1 Threatened / Endangered Species of Concern:

| Common Name | Scientific Name | Status |
|--|---|--------------------------|
| <i>10J Area Zone 2 for Mexican Gray Wolf</i> | <i>Canis lupus beileyi</i> | <i>Listed Endangered</i> |
| <i>Lesser Long-Nosed Bat</i> | <i>Leptonycteris curasoae yerbabuenae</i> | <i>Listed Endangered</i> |

1.2 Grantee shall contact U.S. Fish & Wildlife Service to determine if further coordination is necessary as appropriate under the National Environmental Policy Act (NEPA) and/or Endangered Species Act (ESA).

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EXHIBIT B

ADDITIONAL SPECIFIC COMPLIANCE REQUIREMENTS

Grantee shall comply with the following “Guidelines for Handling Sonoran Desert Tortoises” including, but not limited to, contacting the Arizona Game & Fish Department (AZGFD) for any revisions. In the event of a revision, Grantee shall comply with the most current revision.

GUIDELINES FOR HANDLING SONORAN DESERT TORTOISES ENCOUNTERED ON DEVELOPMENT PROJECTS

Arizona Game and Fish Department

Revised October 23, 2007

The Arizona Game Fish Department (AZGFD) has developed the following guidelines to reduce potential impacts to desert tortoises, and to promote the continued existence of tortoises throughout the state. These guidelines apply to short-term and/or small-scale projects, depending on the number of affected tortoises and specific type of projects.

The Sonoran population of desert tortoises occurs south and east of the Colorado River. Tortoises encountered in the open should be moved out of harm's way to adjacent appropriate habitat. If an occupied burrow is determined to be in jeopardy of destruction, the tortoise should be relocated to the nearest appropriate alternate burrow or other appropriate shelter, as determined by a qualified biologist. Tortoises should be moved less than 48 hours in advance of the habitat disturbance so they do not return to the area in the interim. Tortoises should be moved quickly, kept in an upright position parallel to the ground at all times, and placed in the shade. Separate disposable gloves should be worn for each tortoise handled to avoid potential transfer of disease between tortoises. Tortoises must not be moved if the ambient air temperature exceeds 40° Celsius (105° Fahrenheit) unless an alternate burrow is available or the tortoise is in imminent danger.

A tortoise may be moved up to one-half mile, but no further than necessary from its original location. If a release site, or alternate burrow, is unavailable within this distance, and ambient air temperature exceeds 40° Celsius (105° Fahrenheit), the AZGFD should be contacted to place the tortoise into a AZGFD-regulated desert tortoise adoption program. Tortoises salvaged from projects which result in substantial permanent habitat loss (e.g. housing and highway projects), or those requiring removal during long-term (longer than one week) construction projects, will also be placed in desert tortoise adoption programs. *Managers of projects likely to affect desert tortoises should obtain a scientific collecting permit from the AZGFD to facilitate temporary possession of tortoises.* Likewise, if large numbers of tortoises (>5) are expected to be displaced by a project, the project manager should contact the AZGFD for guidance and/or assistance.

- These guidelines do not apply to the Mojave population of desert tortoises (north and west of the Colorado River). Mojave Desert tortoises are specifically protected under the Endangered Species Act, as administered by the U.S. Fish and Wildlife Service.

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EXHIBIT B

ADDITIONAL SPECIFIC COMPLIANCE REQUIREMENTS

- These guidelines are subject to revision at the discretion of the AZGFD. We recommend that the AZGFD be contacted during the planning stages of any project that may affect desert tortoises.

- Take, possession, or harassment of wild desert tortoises is prohibited by State law. Unless specifically authorized by the AZGFD, or as noted above, project personnel should avoid disturbing any tortoise.

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EXHIBIT C

INSURANCE RIDER TO STATE LAND DEPARTMENT

This Rider is attached to and made a part of the above-referenced Right of Way as if set forth therein verbatim.

R-1 Indemnity. Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnatee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnatee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

In addition, Grantee shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless the State of Arizona, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Grantee's contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

R-2 Insurance Requirements for Any Contractors Used by a Party to this Right of Way. (*Note: this applies only to Contractors used by a governmental entity, not to the governmental entity itself.*) The insurance requirements herein are minimum requirements and in no way limit the indemnity covenants contained in this Right of Way. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the governmental entity or Contractor from liabilities that might arise out of the performance of the work under this Right of Way by the Contractor, his agents, representatives, employees or subcontractors, and Contractor and the governmental entity are free to purchase additional insurance.

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A. Minimum Scope and Limits of Insurance. Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability - Occurrence Form.

Policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability.

| | |
|---|----------------|
| General Aggregate: | \$2,000,000.00 |
| Products-Completed Operations Aggregate: | \$1,000,000.00 |
| Personal and Advertising Injury: | \$1,000,000.00 |
| Each Occurrence: | \$1,000,000.00 |
| Blanket Contractual Liability-Written and Oral: | \$1,000,000.00 |
| Damage to Rented Premises: | \$ 50,000.00 |
| Each Occurrence | \$1,000,000.00 |

The policy shall be endorsed to include the following additional insured language: "The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor." Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Right of Way.

Policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. Business Automobile Liability. Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Right of Way.

- Combined Single Limit (CSL) \$1,000,000

a. The policy shall be endorsed to include the following additional insured language: "The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor". Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Right of Way.

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b. Policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

c. Policy shall contain a severability of interest provision.

IF GRANTEE HAS CERTIFIED IN THE APPLICATION ADDENDUM FOR THIS RIGHT OF WAY THAT GRANTEE WILL NOT BE ENGAGED IN THE CONDUCT OF BUSINESS WITHIN THE SUBJECT LAND GRANTEE SHALL NOT BE REQUIRED TO CARRY THE FOREGOING BUSINESS AUTOMOBILE LIABILITY INSURANCE.

3. Worker's Compensation and Employers' Liability.

| | |
|------------------------------|------------------|
| Workers' Compensation | Statutory |
| Employers' Liability | |
| Each Accident | \$ 500,000 |
| Disease – Each Employee | \$ 500,000 |
| Disease – Policy Limit | \$1,000,000 |

a. Policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. § 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

GRANTEE HAS CERTIFIED IN THE APPLICATION ADDENDUM FOR THIS RIGHT OF WAY THAT GRANTEE WILL NOT BE ENGAGED IN THE CONDUCT OF BUSINESS WITHIN THE SUBJECT LAND GRANTEE SHALL NOT BE REQUIRED TO CARRY THE FOREGOING WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE.

B. Additional Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

1. The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary insurance and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S § 41-621 (E).

2. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage provided by the Contractor shall not be limited to the liability assumed

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under the indemnification provisions of its Contract with the other governmental entity(ies) party to this Right of Way.

C. Notice of Cancellation. With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this Right of Way in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to the Arizona State Land Department, 1616 W. Adams, Phoenix, Arizona 85007, and shall be sent by certified mail, return receipt requested.

D. Acceptability of Insurers. Contractors insurance shall be placed with companies duly licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII or duly authorized to transact Workers' Compensation insurance in the State of Arizona. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. Verification of Coverage. Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Right of Way. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Right of Way must be in effect at or prior to commencement of work under this Right of Way and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Right of Way, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Right of Way shall be sent directly to the Arizona State Land Department, 1616 W. Adams, Phoenix, Arizona 85007. The Right of Way number and project description are to be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Right of Way at any time.

F. Subcontractors. Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the State of Arizona separate certificates for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. Approval. Any modification or variation from the insurance requirements in this Right of Way must have prior approval from the State of Arizona Department of

AMENDMENT – ADDITIONAL CONDITIONS

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Administration, Risk Management Division, whose decision shall be final. Such action will not require a formal Right of Way amendment, but may be made by administrative action.

H. Exceptions. In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university then none of the above shall apply.