

LICENSE AND USE AGREEMENT

This License and Use Agreement ("License") is executed to be effective this 1st day of March, 2017 between the City of Glendale, an Arizona municipal corporation ("City"), and Cow Chow Croppers, an Arizona Partnership ("CCC" or "Licensee") for the use of City-owned property for a farm, as more fully described in this License. The City and CCC are sometimes collectively referred to in this License as the "Parties."

RECITALS

- A. The City owns approximately 76 acres of vacant land at the southwest corner of Bethany Home Road and 91st Avenue in Glendale, Arizona, as more particularly described in Exhibit A, which is attached to this License and incorporated into the License by this reference (the "Property").
- B. The City currently is responsible for the maintenance of the Property, including weed and dust control, and is relieved of this obligation under the License.
- C. The City finds that there is a public purpose for any City expenditure authorized by this License and that the benefit to the City resulting from Cow Chow Cropper's use of and improvements to the Property in accordance with the terms of this License is at least substantially equal to the City's expenditure.

AGREEMENT

NOW THEREFORE, based on the above recitals, which are incorporated here as the intent of the Parties in entering into this License, and in consideration of the terms of this License, the Parties agree as follows:

- 1. **Location and Use Fee.** The City licenses to Licensee the Property, consisting of approximately 3,313,609 square feet (76.07 acres) of land as depicted and legally described in Exhibit A, for the term of this License for payment of a use fee equal to Ten and No/100 Dollars (\$10.00) per year payable within 30 days of the Effective Date.
- 2. **Effective Date & Duration.** The License commences upon the Effective Date and continues until 11:59 p.m. on June 30, 2017 (the "Term" or "License Term"). The City Manager or designee may renew the term of this agreement for an additional 120-day term. Renewals are not automatic and occur only if the City gives the Licensee notice of its intent to renew. The City will give the notice of its intent to renew this agreement no later than 30 days prior to the end of the initial term, and, in the City's sole discretion, the City may exclude any portion of the Property from the proposed renewal (the City will provide to Licensee a map or legal description depicting the proposed new boundaries of the Property). In the event Licensee accepts the City's proposal, the renewed License will pertain only to the remainder of the Property that is not excluded by the City, and the

parties acknowledge and agree that City has the ability to use the excluded portion of the Property without restriction. In addition, during any renewal term, Licensee will provide to City the performance bond described below in Section 6.8.

3. **No Warranties by City.** City licenses the Property to Licensee in its current condition, "as is," with no representation or warranty by the City as to the quality, condition or suitability of use, and without any liability or obligation on the part of the City of making any alterations, improvements, or repairs of any kind on or about the Property.

4. **Use Restrictions.** Licensee will, in consultation and coordination with the City, use the Property as follows:

- 4.1. Licensee is granted the right during the License Term and any additional terms to occupy and use the Property for a sorghum and corn farm operated and maintained in accordance with the terms of this License and the property standards stated in Section 4.5 of this License. Licensee may not use the Property for any other purposes, and will not allow anyone else to use the Property for any other purposes. Licensee will, at its sole cost and expense, procure any and all necessary permits, certificates, licenses, and other authorizations required for such purposes.

- 4.2. Licensee covenants and agrees that it will not use or occupy the Property or permit the Property to be used in a manner contrary to any federal, state, county, or local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by the City. Licensee will also not permit, create, or tolerate any public or private nuisance upon the Property.

- 4.3. INTENTIONALLY OMITTED.

- 4.4. Licensee will not (and will not allow any other person to) deposit, store, dispose of, place or otherwise locate or allow to be located on, under, or within the Property, any hazardous substances, including but not limited to Lead, Cadmium, Arsenic and Poly Aromatic Hydrocarbons and as the term is defined and/or regulated under any federal, state or local law, rule, regulation or order. In the event any such substances are found on, under or within the Property, the Licensee is solely responsible for any and all liabilities from such substances on, under, or within the Property, including the removal and/or remediation of such substances. Licensee agrees to fully indemnify City for any and all violations of this provision to the full extent of the law.

- 4.5. Licensee will comply with the following standards in the use of the Property:

- a. Licensee will not place any buildings, structures or other improvements on the Property without the written consent of the City, which the City may withhold in its sole and absolute discretion.
- b. Licensee will provide and is solely responsible for the installation, use, maintenance and cost of all utilities required for the operation of the at the Property, including but not limited to all water, sewer, sanitation (trash collection) and electricity. Licensee is solely responsible for arranging with the proper utilities for the provision of services, including but not

limited to working with Salt River Project to obtain water for the site, and for payment of all costs related to obtaining and using water.

- c. Licensee will operate and maintain the Property in a neat and orderly manner and in accordance with all applicable City and Maricopa County requirements, including erosion control, weed control, trash pick-up, and dust control. Any dirt areas used for vehicle parking will be treated with asphalt millings or other approved dust control measures. Parking on native soil is not allowed.
- d. Licensee will conduct its activities on the Property in a manner that does not disturb the peaceful and quiet enjoyment of the residents who live nearby or create nuisances as prohibited by the Glendale City Code or other applicable laws.
- e. Licensee must obtain approval for any lighting through the City's normal approval process but in no event will a light pole exceed 15 feet in height.
- f. Licensee will not use or store petroleum-based products, fertilizers, pesticides, propane or other chemicals on the Property, unless expressly permitted in writing by the City. Use of raw animal waste, manure, and/or human sewage on the Property, unless expressly permitted in writing by the City, is prohibited.
- g. INTENTIONALLY OMITTED.
- h. Licensee agrees to pay City, within thirty (30) days of being billed, any utility expenses incurred by City during the License Term (as well as during any additional terms and any time following the License Term and additional terms, if any, in the event that Licensee's activities caused a utility expense), for utility costs directly related to Licensee's use, including but not limited to water and sewage expenses and solid waste disposal.
- i. INTENTIONALLY OMITTED.
- j. Licensee will take all appropriate measures to prevent tracking dust, dirt, mud, or other similar substances, onto all roads surrounding the Property, including but not limited to 91st Avenue and Bethany Home Road.

5. Soils Testing.

- 5.1. Prior to using the Property, the City obtained soil test results for certain metals and contaminants. The soil test results did not indicate a contaminant level exceeding the maximum level established by EPA/ADEQ and as listed in the Arizona Administrative Code: http://www.azsos.gov/public_services/Title_18/18-07.htm ("Soil Remediation Level")
- 5.2. Prior to the addition of any soil, topsoil, soil enhancement or similar product to or on the Property, except soil, topsoil, soil enhancements or similar products purchased from a commercial retailer, Licensee and City will jointly consider the soil tests described in **Section 5.1**. If the soil test results indicate a contaminant level exceeding the Soil Remediation Level, Licensee will not add to or use the

product on the Property. In the event Licensee wishes to use soil, topsoil, soil enhancements or similar products purchased from a commercial retailer, Licensee will provide the relevant product information to the City prior to use, and City will have three (3) business days to approve or deny the use of such products in the City's sole and absolute discretion.

- 5.3. No fewer than twenty (20) days prior to any License termination, the City will obtain, soil test results for certain metals and contaminants, which may include (at the City's sole discretion) total metals (arsenic, barium, cadmium, chromium, lead, selenium, silver and mercury), organochlorine pesticides, chlorinated herbicides, and any other parameters deemed necessary by the City. If the soil test results indicate a contaminant level exceeding the Soil Remediation Level, Licensee is solely responsible for any and all liabilities from such substances on, under, or within the Property, including the removal and/or remediation of such substances. Licensee hereby agrees to fully indemnify City for any and all violations of this provision to the full extent of the law.

6. **Maintenance and Repair.** During the License Term, Licensee at its sole cost and expense will do and perform the following:

- 6.1. Keep the Property in a neat, clean, pest-free and debris-free condition, including but not limited to keeping the Property free of weeds, pests, dead vegetative materials, garbage, compost, offensive odors, and tools and equipment.
- 6.2. Keep the Property clear of all obstructions or refuse of any kind.
- 6.3. Keep and maintain the Property in good and substantial repair so that the Property fully complies with all applicable laws, statutes, ordinances and regulations.
- 6.4. Keep and maintain any abutting sidewalk around the Property in a neat, clean and dust-free condition, free and clear of all obstructions or refuse of any kind.
- 6.5. In the event the Property is in such condition, need or state of disrepair that Licensee cannot continue to occupy and use the Property as permitted in this License, City will have no obligation to make, or liability for not undertaking to make, any alterations, improvements or repairs of any kind to the Property necessary to continue Licensee's use and occupancy of the Property during the License Term, and that upon such an event Licensee may make the alterations, improvements or repairs necessary to continue the License, all at Licensee's sole cost and expense, and with the prior written approval of City, which approval will not be unreasonably withheld.
- 6.6. INTENTIONALLY OMITTED.
- 6.7. The Property will at all times be under the control of Licensee. As a result, Licensee is solely responsible for all security to protect the Property. However, the City reserves the right to have designated employees or agents enter the Property at any and all reasonable times. The designation of authorized individuals authorized to enter the Property will be determined solely by the City or its designee, as such interruption is necessary in the interest of public health or safety.

- 6.8 During any renewal term of this License, Licensee will, no later than the date any renewal term begins, provide the City with a cash deposit, letter of credit or performance bond in the amount of \$5,000. Any performance bond is conditioned upon Licensee's faithful performance of all its obligations under this License. A surety company duly authorized to do business in Arizona and acceptable to the City's Risk Manager will authorize any bond. Licensee may choose to provide a cash deposit, letter of credit or performance bond in its sole discretion.
7. **Alterations and Modifications.** Licensee will not make, or cause to be made, any alterations or modifications to the Property without the prior written consent of the City. All City-approved alterations and modifications will (i) be performed and completed in a good, workmanlike manner at the sole cost and expense of Licensee; (ii) be completed in compliance with all applicable laws, ordinances, codes, rules, regulations, and/or orders; and (iii) become a part of the Property, and any title will vest in and be retained by City. In any farming operation on more than 10 contiguous acres of land, Licensee will comply with the Agriculture PM General Permit administered by the Arizona Department of Environmental Quality.
8. **Improvements and Liens.**
- 8.1. Licensee covenants and agrees that any improvements made by Licensee to the Property during the Term will be made only with the written consent of City, and will, at the termination of this License, without any cost to the City, right of recoupment or right of set-off against any unpaid amounts, become the sole property of City.
- 8.2. Licensee will not permit the Property to become subject to any lien, including any liens imposed as a result of activities of Licensee, and if any lien attaches to the Property or any portion thereof, it constitutes a material breach of the License. City retains the right in its discretion to pay and discharge any such liens, and the amount of the liens, together with costs and reasonable attorneys' fees, will become additional amounts due immediately from Licensee.
9. **Utilities and Services.** Licensee is solely responsible for the provision and payment of all City water, electricity, sewer or storm sewer charges, including the installation of a water meter or any other utility service used on the Property during the License Term or any additional terms, as well as any charges accruing prior to or following the License Term or any additional terms that relate to Licensee's use of the Property.
10. **Assigning and Subletting.** This License is not assignable, and any attempted assignment is void and vests no rights in the purported assignee.
11. **Right of Inspection.** Licensee agrees to permit City or City's agents, contractors, or employees to enter the Property at all reasonable times, and at any time in the case of emergency maintenance or repair, to view, or for normal maintenance or repair work, and Licensee waives any and all claims and demands for loss or damage on account of such entry to the Property. City will conduct its right of entry in a manner so as to reasonably minimize the disruption of Licensee's operations.

12. **Use of City's Name/Logo.** In its activities pursuant to this License, the Licensee will not display the name "City of Glendale" or the City's logo or seal on its written materials without the prior written approval of the City Manager or designee.
13. **Indemnification.** Licensee agrees to pay and to protect, defend, indemnify and save harmless City from and against, any and all liabilities, damages, costs, expenses (including any and all attorneys' fees and expenses of Licensee and any and all reasonable attorneys' fees and expenses of City), causes of action, suits, claims, demands, or judgments of any nature whatsoever arising from any acts or omissions as a result of Licensee's or any of its agents, servants, employees, contractors, licensees, sub-licensees or invitees use and occupancy of the Property including, but not limited to the following:
 - 13.1. Any work or thing done in, on, or about the Property or any part of the Property, except for any work or things done by City.
 - 13.2. Injury to, or the death of persons or damage to property on the Property or upon adjoining sidewalks, including such injuries, death or damages which may occur on adjoining streets, alleys and curbs in any manner growing out of or connected with the use, non-use, condition, possession, operation, maintenance, management, or occupation of the Property.
 - 13.3. Any negligence or intentional wrongful acts on the part of the Licensee or any of its agents, contractors, servants, members, officers, directors, volunteers, employees, licensees, sub-licensees and/or invitees.
 - 13.4. Violation of any agreement or condition of this License and of conditions, permits, agreements, restrictions, statutes, charters, laws, rules, ordinances, or regulations affecting the Property or the ownership, occupancy, or use of the Property.
 - 13.5. Any injury or death of persons or animals as a result of contaminants that are present in the soil, if any.
 - 13.6. Nothing in this License is construed to obligate Licensee to protect, indemnify, and save City and its officers and employees harmless from and against liabilities, losses, damages, costs, expenses (including attorneys' fees), causes of action, suits, claims, demands, and judgments arising from or by reason of the grossly negligent or intentional wrongful acts of City or any of its agents, employees, or officers.
14. **Insurance.** Licensee will procure and maintain for the duration of the License, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the License and use of the Property hereunder and the results of that License and use by the Licensee, his agents, representatives, employees or subcontractors as detailed in Exhibit B, attached and incorporated herein by this reference.
15. **Taxes.** Licensee will be responsible for the payment of any applicable taxes imposed upon the Licensee during the License Term including any resulting from Licensee's occupancy and/or use of the Property. Licensee will have the right to lawfully contest the amount of any such taxes or assessments.

16. **Breach and Right of Re-Entry.** If any part of the Property is assigned without the consent of City as required in this License, or if any term, condition, covenant, or obligation is breached by Licensee, Licensee authorizes and fully empowers City to use all lawful means available to terminate this License and to re-enter and take possession of the Property, and remove all property and other items on the Property.
17. **Termination of License.**
 - 17.1. At any time during the License Term, either the City or the Licensee may terminate this License without cause by giving the other party forty-five (45) days' prior written notice of License termination.
 - 17.2. The City may terminate the License with cause for a breach by Licensee of this License by giving Licensee fifteen (15) days prior written notice of License termination. In addition, the License is subject to cancellation pursuant to A.R.S. § 38-511.
 - 17.3. In the event of termination for any reason, Licensee will keep and maintain the Property during the License Term or any additional terms, and quit and deliver the Property to City peaceably and quietly at the end of the License Term or any additional terms, or at any earlier termination date determined by City, in a good order and condition, and restored close to its original state, reasonable use excepted and in conjunction with the provisions of Section 5.3. At the conclusion of farming, the Licensee shall implement at least two best management practices for non-cropland as described in Arizona Administrative Code R18-2-610.01.
18. **No Relocation Benefits.** Upon termination of the License, Licensee acknowledges and agrees that it is not entitled to receive any relocation benefits or assistance under federal and state relocation laws and regulations and will make no claim for such relocation benefits.
19. **ADA and Legal Compliance.** Licensee in the construction, repair and/or maintenance of any improvements on the Property will fully comply with state law concerning the Legal Arizona Workers' Act and the requirements of the Americans with Disabilities Act (ADA), as amended from time to time. Licensee is solely responsible to select and retain contractors for the construction, installation, repair or maintenance of all permitted improvements, so long as all selection, retention and payment is in compliance with applicable law. City will not in any way, be held liable or responsible for the debts of Licensee, including the obligations concerning construction, installation, repair or maintenance of the Property.
20. **Entire Agreement.** This License contains the entire agreement of the parties on the matters covered in this License. No other agreement, statement, amendment, modification or promise made by any party or by any employee, officer, or agent of any party is binding, unless it is in writing and signed by all the parties to this License.
21. **Governing Law.** This License is construed and enforced according to and governed by the laws of the State of Arizona, County of Maricopa.
22. **Time.** Time is of the essence in the performance of this License.

23. **Severability.** Should any term or provision of this License be held to be invalid or unenforceable then the remainder of this License will not be affected by such holding, and each term and provision will continue to be valid and enforceable to the fullest extent permitted by law.
24. **Successors.** All of the provisions contained in this License are binding upon and inure to the benefit of the parties and their respective successors and assigns, if any.
25. **Captions.** The captions of this License are for convenience only, and are not a part of this License and do not in any way limit or amplify the terms and provisions of this License.
26. **Notices.** Any notice, consent or waiver required or permitted to be given or served by either party to this License will be in writing and either delivered personally to the other party or mailed by certified or registered mail, return receipt requested, addressed as follows:

CITY: City of Glendale
Attention: Public Works Director
6210 West Myrtle Avenue
Suite 111
Glendale, Arizona 85301

COPIES TO: City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

LICENSEE: Cow Chow Croppers
7711 W. Northern
Glendale, Arizona 85303
Attention: Paul Rovey

Either party may change its address by serving written notice on the other party.

27. **Surrender of Possession.** Licensee will on the last day of occupancy, or on the earlier termination as provided in this License, peaceably and quietly surrender and deliver the Property, and every part of the Property, to City. Any trade fixtures, equipment or personal property used in connection with the use and operation of the Property which are not removed at the termination of this License are deemed abandoned and become the sole property of City without any payment or offset.
28. **Binding.** The parties agree that all the covenants, terms, obligations and conditions of this License extend, apply to, and firmly bind the heirs, executors, administrators, successors, and assigns of the respective parties as fully as the respective parties are

themselves bound, but this provision will not authorize the assignment or underletting of this License contrary to the provisions contained in this License.

(Signatures appear on the following page.)


The parties have signed and executed this 7 day of March, 2017.

CITY OF GLENDALE,
an Arizona municipal corporation



Kevin Phelps
City Manager

ATTEST:



Julie Bower, (SEAL)
City Clerk

APPROVED AS TO FORM:



(Signature)
Michael Bailey
City Attorney

LICENSEE
Cow Chow Croppers

By: 

Its: Managing Partner

EXHIBIT A

Legal Description and Depiction



April 22, 2008
Rick No. 3840A
SCB

GROSS AREA DESCRIPTION

A portion of the Northeast quarter of Section 16, Township 2 North, Range 1 East, Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at the Northeast corner of said Section 16;
THENCE South 00 degrees 14 minutes 01 seconds West, along the East line of said Northeast quarter and along the centerline of 91st Avenue, 83.79 feet to the calculated centerline of Bethany Home Road and the POINT OF BEGINNING;
THENCE continuing South 00 degrees 14 minutes 01 seconds West, along said East line of the Northeast quarter and along said centerline of 91st Avenue, 1232.83 feet;
THENCE South 84 degrees 40 minutes 24 seconds West, 69.59 feet;
THENCE South 89 degrees 24 minutes 31 seconds West, 2581.87 feet to the West line of said Northeast quarter;
THENCE North 00 degrees 26 minutes 23 seconds East, along said West line, 1232.43 feet to the aforementioned calculated centerline of Bethany Home Road;
THENCE North 89 degrees 16 minutes 27 seconds East, along said calculated centerline, 2646.79 feet to the POINT OF BEGINNING, as shown on Exhibit "A" attached herewith as page 2 of 2. Subject parcel comprising 75.117 acres, more or less, and subject to all easements of record.



Expires: 09-30-10

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PHOENIX TUCSON SAN DIEGO RIVERSIDE ORANGE SACRAMENTO SAN LUIS OBISPO BAKERSFIELD



SCALE 1" = 400'

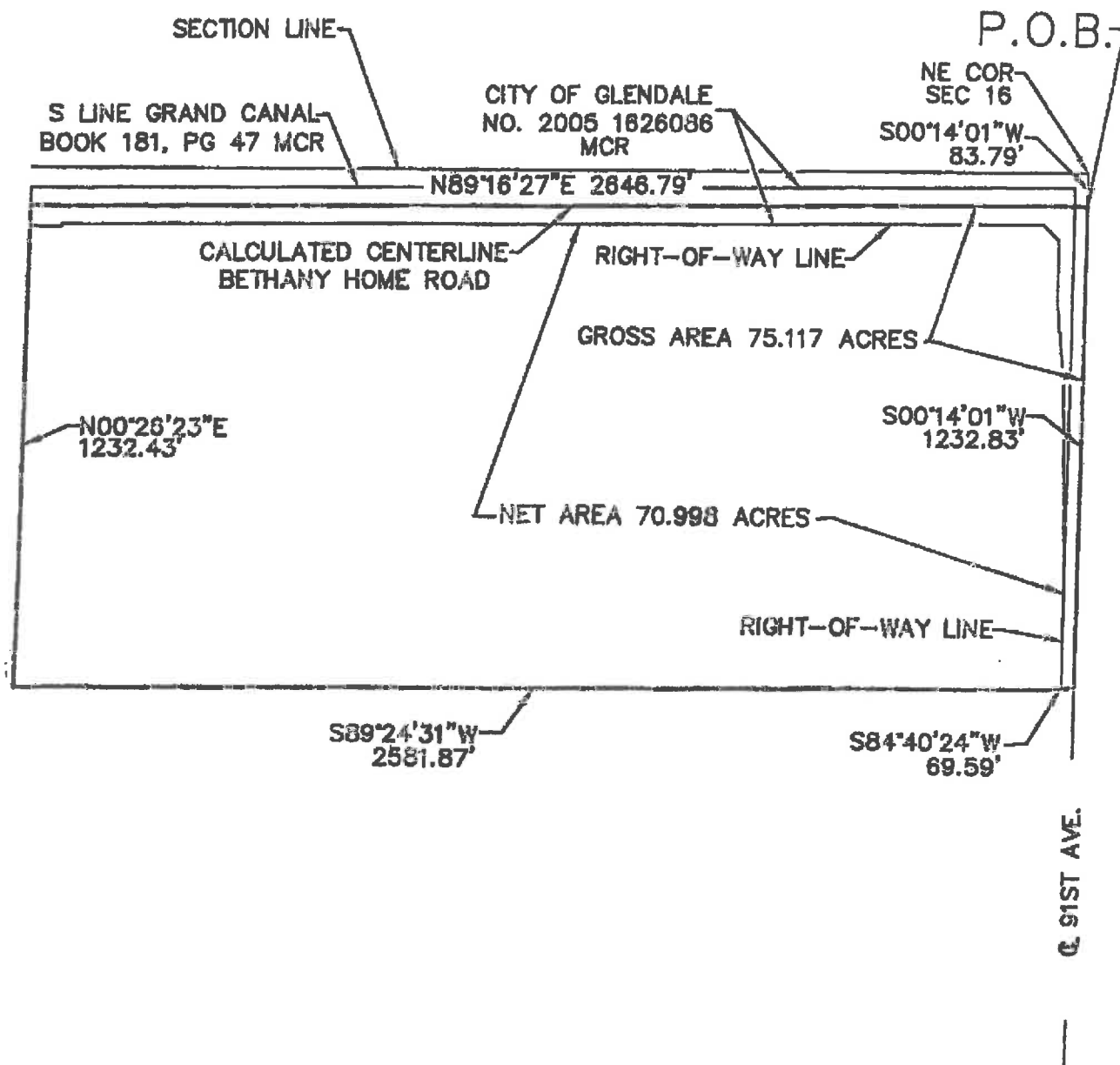


EXHIBIT "A"

PAGE 2 OF 2

EXHIBIT B
Insurance Requirements

Licensee will procure and maintain for the duration of the License insurance against claims for injuries to persons or damages to property that may arise from or in connection with the License and use of the Property under this License and the results of that License and use of the Property by the Licensee, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage will be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than **\$1,000,000** per occurrence, **\$2,000,000** aggregate. If a general aggregate limit applies, either the general aggregate limit will apply separately to this project/location or the general aggregate limit will be twice the required occurrence limit.
2. **Contractors' Pollution Legal Liability** with limits no less than **\$1,000,000** per occurrence or claim and **\$2,000** policy aggregate. If coverage is provided on a claims-made coverage basis, the retroactive date must be shown and this date must be before the execution date of the License or the beginning of work. Insurance must be maintained and evidence of insurance must be provided for at least two (2) years after termination of the License.
3. **Workers' Compensation:** as required by the State of Arizona, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

If the Licensee maintains higher limits than the minimums shown above, the City requires and is entitled to coverage for the higher limits maintained by the Licensee.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Licensee including materials, parts, or equipment furnished in connection with such work or operations.

Primary Coverage

For any claims related to this License, the Licensee's insurance coverage is primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-

insurance maintained by the City, its officers, officials, employees, or volunteers is excess of the Licensee's insurance and does not contribute with it.

Notice of Cancellation

Each insurance policy required above will provide that coverage will not be canceled, except with notice to the City.

Waiver of Subrogation

Licensee grants to City a waiver of any right to subrogation which any insurer of said Licensee may acquire against the City by virtue of the payment of any loss under such insurance. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Licensee will furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning does not waive the Licensee's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.