

**STATE LAND DEPARTMENT  
STATE OF ARIZONA**

**SPECIAL LAND USE PERMIT**

Permit No. 23-94344-05

THIS SPECIAL LAND USE PERMIT ("Permit") is entered into by and between the State of Arizona, Arizona State Land Department ("Permitter"), through the State Land Commissioner ("Commissioner") and

**COCHISE COUNTY FLOOD CONTROL DISTRICT**

("Permittee"). In consideration of the payment of rental and of performance by the parties of each of the provisions set forth herein, the parties agree as follows:

**ARTICLE 1  
SUBJECT LAND**

1.1 Permitter grants to Permittee a Permit for special use on the State Land described in Appendix A attached hereto (the "Subject Land").

1.2 Permittee makes use of the Subject Land "as is" and Permitter makes no express or implied warranties as to the physical condition of the Subject Land.

**ARTICLE 2  
TERM**

2.1 The term of this Permit commences on April 4, 2024 ("Commencement Date") and expires on April 3, 2029 ("Expiration Date"), unless sooner canceled or terminated as provided herein or as provided by law. This Permit expires on the date indicated and carries no holdover rights.

2.2 The Permittee will not sub-let or assign the Subject Land herein described in this Permit without the written consent of the State Land Commissioner, first obtained, and will, upon the expiration of the Permit surrender peaceable possession of said land.

**ARTICLE 3**  
**FEE**

3.1 Permittee agrees to pay as rental therefore an amount to be determined by the State Land Commissioner each year by an appraisal made by him, or his duly authorized agent, as provided by law. The rental so fixed by the State Land Commissioner will be due and payable annually in advance.

3.2 If the Permittee should fail to pay the agreed rental when due, or fail to keep the covenants and agreements herein set forth, the State Land Commissioner at his option, may cancel said Permit or declare the same forfeited in the manner provided by law.

3.3 The State of Arizona shall be forever wholly absolved from any liability for damages which might result to the Permittee herein on account of this Permit having been forfeited for nonpayment of rentals due thereunder prior to the expiration of the full time for which it is issued.

3.4 There shall be added to the delinquent rental or other monies due, a penalty and delinquent interest. The delinquent interest rate shall be set by the State Treasurer according to law. The penalty shall be the greater of a minimum processing cost as determined by the Commissioner or five (5%) percent. The delinquent rent, penalty and interest shall be a lien on the improvements and property on the land.

**ARTICLE 4**  
**PERMITTED USE**

4.1 This Permit grants authority only for the following specific purpose; any other use by the Permittee of the land described herein, or any of the products therefrom, except as provided below, is expressly prohibited:

**Livestock Grazing**

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4.2 All State Lands to which this Permit is applicable together with other owned and controlled properties will be fenced into grazing units or the livestock ranged upon these lands controlled by some other means.

4.3 The issuance of this Permit does not constitute permission being given to range or graze livestock on lands not owned or controlled.

4.4 The numbers of livestock grazed will not exceed the established carrying capacity as permitted under this Permit. If Permittee desires to graze livestock in excess of established carrying capacity, he must first make application to and receive approval from the Department. Additional grazing fees will be charged for the use of additional AUMs.

4.5 The Department reserves the right to adjust the carrying capacity at any time during the term of the Permit as required by forage conditions.

4.6 This Permit is subject to any leases, rights of way, and permits which may exist, and any and all present commitments in connection with those leases and permits. Permittee shall in no way interfere with the peaceful possession and use of the Subject Land by a valid surface leaseholder, permittee, licensee (including hunters) of said Subject Land.

4.7 Permitter also reserves the right to grant rights of way and easements over, across, or upon the lands embraced in this Permit for public highways, railroads, tramway, telephone, telegraph and transmission lines, pipe lines, irrigation works, flood control, drainage works, logging and other purposes, and this Permit is issued subject to all existing rights of way.

4.8 Permittee shall not cause nor grant permission to another to cause any waste or loss in or upon the Subject Land. Permittee, its employees and agents shall not cut, consume or remove any timber, or standing trees that may be upon the Subject Land, without the prior written consent of Permitter, except that Permittee may cut wood for fuel for domestic uses and authorized improvements on the Subject Land. Nothing herein shall permit the cutting of saw timber for any purpose.

#### **ARTICLE 5** **CONFORMITY TO LAW**

5.1 Permittee shall not use or permit the Subject Land to be used in any manner that is not in conformity with all applicable federal, state, county and municipal laws, rules and regulations.

5.2 The terms, conditions and covenants of this Permit are subject to present laws relating to State Lands and the rights of both Permitter and Permittee hereunder are each and all subject to such modifications as may be consistent with such amendments, revisions or repeals of existing laws as may hereafter be made and no provisions of this Permit shall create any vested right in the Permittee herein.

#### **ARTICLE 6** **IMPROVEMENTS**

6.1 Any and all structures placed by Permittee upon the Subject Land shall be temporary and removable, and shall be removed upon expiration, cancellation, revocation or termination of this Permit. Approval from the Permitter is required prior to the construction of such improvements. The placement of permanent improvements upon the Subject Land by Permittee is expressly prohibited; any permanent improvements so placed upon the Subject Land by Permittee shall be removed by Permittee without damage to the Subject Land or at the option of Permitter shall be forfeited and become the property of the State. Permittee shall remain liable for the cost of removal of all improvements and for restoration of the Subject Land, as set forth more fully in Article 11.

6.2 If at any time after the execution of this Permit it is shown to the satisfaction of the State Land Commissioner that the Permittee herein has misrepresented, by implication or otherwise the value of the improvements placed upon the land herein embraced by a former permittee, or any other person or persons and the Permittee herein not being the owner of said improvements at the time of the execution of this Permit, this Permit shall be null and void, at the option of the State Land Commissioner, insofar as it relates to the land upon which said improvements are situated.

**ARTICLE 7**  
**CANCELLATION, TERMINATION & ABANDONMENT**

7.1 If at any time after the execution of this Permit, it is shown to the satisfaction of the State Land Commissioner, that there has been fraud or collusion upon the part of the Permittee to obtain or hold this Permit at a lesser rental than its value, or through such fraud and collusion a former permittee of said land has been allowed to escape payment of the rental due for the use of said land by the former permittee, this Permit shall be null and void, at the option of the State Land Commissioner, insofar as it relates to the land affected by said fraud or collusion.

7.2 Permittee shall give Permitter thirty (30) days' notice in writing in advance of the abandonment of said premises or termination of these presents.

7.3 In the event any land affected by this Permit is reclassified by order of the State Land Commissioner, or sold, this Permit will automatically cancel as to the land reclassified or sold upon the issuance of a new lease or at the time of auction, whichever occurs first.

7.4 If Permittee should fail to keep the covenants and conditions herein set forth, the Commissioner at his option, may cancel said Permit.

7.5 This Special Land Use Permit shall be terminable at will with 25 days written notice.

7.6 This Permit is subject to cancellation pursuant to A.R.S. § 38-511.

**ARTICLE 8**  
**INSURANCE AND INDEMNITY**

8.1 Except as provided in Paragraphs 8.2 and 8.3, Permittee hereby expressly agrees to indemnify and hold Permitter harmless from and against all liabilities, obligations, damages, penalties, claims, causes of action, costs, charges and expenses, including attorneys' fees and costs ("losses"), arising from: (a) any injury or damage to a Permitter Invitee or their property on the Subject Land resulting from Permittee's intentional actions or negligence, (b) any injury or damage to a Permittee Invitee or their property on or about the Subject Land resulting from Permittee's use of the Subject Land, and (c) any failure on the part of Permittee to perform or comply with any of the provisions of this Permit.

8.2 Permittee's obligation to indemnify Permitter for liabilities, obligations, and damages shall not include the proportionate share of any such liabilities, obligations or damages based on any intentional conduct or active negligence of Permitter. Permittee's obligation to indemnify Permitter for attorneys' fees and costs shall not include that portion of such fees and costs equal to the proportionate share of Permitter's liability to the injured party based on any intentional conduct or active negligence of Permitter.

8.3 Notwithstanding any other provision in this Permit, Permittee shall have no obligation to indemnify Permitter with respect to any claim asserted by a recreational or educational user that is subject to A.R.S. § 33-1551 unless the Permittee's conduct, or its employee's or agent's conduct, was a direct cause of the injury and was willful, malicious, or grossly negligent.

8.4 For purposes of this Article 8, the terms "recreational user," "educational user" and "grossly negligent" shall have the meanings set forth in A.R.S. § 33-1551. The term "Permitter Invitee" means Permitter's employees, agents, and any other person that Permitter expressly or impliedly grants permission to enter the Subject Land. The term "Permittee Invitee" means Permittee's employees, agents, and any other person that Permittee expressly or impliedly grants permission to enter the Subject Land.

8.5 If an action or proceeding is brought against Permitter that falls within the scope of Permittee's obligation under Paragraphs 8.1 or 8.2 to indemnify Permitter for Permitter's attorneys' fees, Permittee, upon Permitter's request and at Permittee's expense, will defend such action or proceedings, or cause the same to be defended either by counsel designated by Permittee or, where such occurrence is covered by liability insurance, by counsel designated by the insurer.

8.6 Permittee shall protect, defend, indemnify and hold harmless the Permitter from and against all liabilities, obligations, losses, environmental responses, and cleanup costs, charges and expenses, including attorneys' fees and court costs arising out of or related to the presence or existence of any substance regulated under any applicable Federal, State or local environmental laws, regulations or ordinances or amendments thereto because of: (a) any substance that came to be located on the Subject Land resulting from any use or occupancy of the Subject Land by the Permittee; or (b) any release, threatened release, escape, seepage, leakage, spillage, discharge or emission of any such substance in, on, under or from said Subject Land that is caused by any conduct, actions or negligence of the Permittee, regardless of when such substance came to be located on the Subject Land.

## ARTICLE 9 ENVIRONMENTAL MATTERS

9.1 Permittee shall strictly comply with Environmental Laws, relating but not limited to hazardous and toxic materials, wastes and pollutants. Compliance means the Permittee shall act in accordance with the necessary reporting obligations, obtain and maintain all permits required, provide copies of all documents as required by Environmental Laws. For purposes of this Permit the term "Environmental Law" shall

include but not be limited to any relevant federal, state, or local laws, and applicable regulations, rules and ordinances, and publications promulgated pursuant thereto, including any future modifications or amendments relating to environmental matters.

**ARTICLE 10**  
**RESERVATION; RELINQUISHMENTS**

10.1 Permitter excepts and reserves out of the Permit hereby made, all oils, gases, coal, ores, limestone, minerals, fossils and fertilizers of every name and description that may be found in or upon the Subject Land, or any part thereof.

10.2 Permitter reserves the right to relinquish to the United States land needed for irrigation works in connection with a government reclamation project and to grant or dispose of rights of way and sites for canals, reservoirs, dams, power or irrigation plants or works, railroads, tramways, transmission lines of any other purpose or use on or over the Subject Land.

10.3 Permitter also reserves the right, as provided by law, to grant to the United States rights of way and easements over, across or upon the lands embraced in this Permit for canals, reservoirs, dams, power or irrigation plants or works, railroads, tramways, transmission lines or other purposes, for irrigation works in connection with any government reclamation project.

**ARTICLE 11**  
**NATIVE PLANTS AND CULTURAL RESOURCES**

11.1 If the removal of plants protected under the Arizona Native Plant Law is necessary to enjoy the privilege of this Permit, Permittee hereunder must previously acquire the written permission of the Arizona State Land Department and Arizona Department of Agriculture to remove those plants.

11.2 Permittee shall comply with the provisions of the Arizona Native Plant Law, A.R.S. § 3-901 et seq., or any successor statutes, and with the provisions of the Arizona Antiquities Act relating to archaeological discoveries, A.R.S. § 41-841 et seq., or any successor statutes. Permittee shall not disturb any cacti or other protected native plants nor disturb any ruins, burial grounds or other archaeological sites except as may be permitted by these laws. In addition, Permittee shall notify Permitter of any prehistoric or historic archaeological discoveries on the Subject Land.

**ARTICLE 12**  
**PERMITTEE SHALL PROTECT AND RESTORE SUBJECT LAND**

12.1 In the event of known trespass on the Subject Land resulting in damage thereto, Permittee shall notify Permitter and appropriate law enforcement authorities.

12.2 Upon abandonment, cancellation, revocation or termination of this Permit,

Subject Land shall be restored to its original condition, to the satisfaction of the Permitter. Such restoration shall include, but shall not be limited to reseedling, installation of erosion control structures, removal of any and all material, equipment, facilities, temporary structures, or debris, deposited by Permittee on Subject Land. If Permittee fails to remove all such material, equipment, facilities, temporary structures, or debris within a reasonable period, as determined by the Permitter, they shall be forfeited and become the property of the State, but Permittee shall remain liable for the cost of removal of all materials and for restoration of the site.

**ARTICLE 13**  
**CONDEMNATION AND EMINENT DOMAIN**

13.1 If at any time during the duration of this Permit the whole or any part of the Subject Land shall be taken for any quasi-public or public purpose by any person, private or public corporation, or any governmental agency having authority to exercise the power of condemnation or eminent domain pursuant to any law, this Permit shall expire on the date when the leased property is taken or acquired as to the leased property so taken or acquired. Except as set forth below, the rights of Permittee and Permitter to compensation for such taking shall be as provided by law. The Permittee shall have no compensable right or interest in the real property being condemned or interest in the unexpired term of this Permit or any renewal except as provided by law and in any event no interest greater than 10 percent of the total award for the land. The Permitter shall be entitled to and shall receive any and all awards for severance damages to remaining proceedings concerning the Subject Land. Permittee shall have the right to (1) prorated reimbursement for prepaid rent, (2) any and all awards for payments made for any authorized improvements which are taken, and (3) severance damages for any damage to Permittee's remaining permitted use resulting from the taking.

**ARTICLE 14**  
**MISCELLANEOUS**

14.1 It is understood by the Permittee that the establishment of any water right, or rights, shall be by and for the State of Arizona, and no claim thereto shall be made by said Permittee; such rights shall attach to and become appurtenant to the said land.

14.2 This Permit is issued subject to the execution by Permitter of drilling permits and leases for the purpose of prospecting for, and the extraction of, oil and/or gases, coal, ores, limestone, minerals, fossils and fertilizers.

14.3 In the event of dispute between the parties to this Agreement, it is agreed to use arbitration to resolve the dispute but only to the extent required by A.R.S. § 12-1518; and, in no event shall arbitration be employed to resolve a dispute which is otherwise subject to administrative review by the Department pursuant to statute or Department Administrative Rule.

14.4 All of the covenants, conditions and agreements, attached to this Permit, shall be, become and are a part of the Permit, the same as though set forth in full over the

signatures of the contracting parties hereto.

**14.5** In any action arising out of this Permit, the prevailing party is entitled to recover reasonable attorney's fees in addition to the amount of any judgement, costs and other expenses as determined by the court. In the case of Permitter, reasonable attorneys' fees shall be calculated at the reasonable market value for such services when rendered by private counsel, notwithstanding that it is represented by the Arizona Attorney General's Office or other salaried counsel.

**14.6** This Permit is granted subject to all the provisions and requirements thereto, and to the present laws relating to State Lands, and all amendments, revisions or repeals of all existing laws, the same as though they were fully set forth herein. No provisions of this Permit shall create any vested right in Permittee.

**14.7** This document is submitted for examination and shall have no binding effect on the parties unless and until executed by the Permitter (after execution by the Permittee), and a fully executed copy is delivered to the Permittee.

**14.8** Every obligation of the State under this Permit is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Permit, this Permit may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or any damages as a result of termination under this paragraph.

**14.9** The parties agree to be bound by applicable State and Federal rules governing Equal Employment Opportunity, Non-discrimination and Disabilities, including Executive Order No. 2009-09.

**APPENDIX A**

STATE OF ARIZONA LAND DEPARTMENT  
 1110 W.WASHINGTON ST.  
 PHOENIX, AZ 85007

RUN DATE: 7 June 2024  
 RUN TIME: 8:48 AM  
 PAGE: 1

KE-LEASE# 023-094344-05-105 APPTYPE: RENEWAL  
 AMENDMENT#: 0

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LAND#	LEGAL DESCRIPTION	AUS	ACREAGE
21.0-S-21.0-E-15-02-031-8000	SWNE SENW W2SE	1.80	160.000
21.0-S-21.0-E-26-02-031-8000	W2	3.50	320.000
21.0-S-21.0-E-27-02-031-8000	SESE	0.40	40.000
21.0-S-21.0-E-32-02-030-8009	NENE S2NE NWSWNW E2SENEW NWSENEW E2NESW W2SWSW W2E2SWSW S2SWSESW M&B IN NWNWNE N2NW NWNESWNW	4.80	441.240
21.0-S-21.0-E-35-02-031-8000	ALL	7.00	640.000
22.0-S-21.0-E-02-02-030-8000	LOTS 1 THRU 4 S2N2 NESW W2SW E2SESW SE	6.80	621.560
22.0-S-21.0-E-03-02-031-8000	LOTS 1 THRU 4 S2N2 S2	7.00	642.160
22.0-S-21.0-E-04-02-031-8000	LOTS 1 2 S2NE S2	5.30	481.320
22.0-S-21.0-E-09-02-031-8000	NE S2NW	2.60	240.000
22.0-S-21.0-E-11-02-031-8000	NE S2	5.30	480.000
	TOTALS	44.50	4,066.280



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

STATE OF ARIZONA, PERMITTOR  
Arizona State Land Commissioner

\_\_\_\_\_  
By: Date

(SEAL)

\_\_\_\_\_  
COCHISE COUNTY FLOOD CONTROL DISTRICT

\_\_\_\_\_  
Authorized Signature Date

\_\_\_\_\_  
Printed Name Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

