

**STATE LAND DEPARTMENT
STATE OF ARIZONA**

**RIGHT-OF-WAY
SOLD AT PUBLIC AUCTION**

R/W No. 16 - 103723

THIS INDENTURE, made June 23, 1998, by and between the State of Arizona, hereinafter called the Grantor, and

CITY OF FLAGSTAFF

hereinafter called the Grantee.

WITNESSETH, that in accordance with the provisions of A.R.S. §37-461, the Grantee herein has filed with the State Land Commissioner an application for a right-of-way for the purpose of constructing, operating, and maintaining

a public trail

and

WHEREAS, the said map and field notes thereon have been adopted by the Grantee herein as the line of definite location of the aforesaid Right-of-Way, and which said right-of-way map is herein referred to and made a part hereof as fully as though set out herein, and

WHEREAS, it is understood and agreed by the Grantee herein that, as a condition precedent to the granting of the Right-of-Way applied for, the land covered by the said Right-of-Way shall be used for no purpose other than the location, construction and maintenance of said Right-of-Way over and across the following State lands, to-wit described in Appendix A.

TO HAVE AND TO HOLD the same for so long as it may be used for the purpose designated, and subject to the conditions and reservations set forth herein.

IT IS UNDERSTOOD AND AGREED that in case the necessity for the Right-of-Way shall no longer exist, or the Grantee should abandon or fail to use the same, then this grant shall become void, and the right to use the land and all the rights granted hereunder shall revert to the State of Arizona, whereupon the Grantee agrees to execute and deliver a complete release of all right, title and interest therein.

This grant is, and shall be binding upon the said Grantee, his successors and assigns.

IT IS FURTHER UNDERSTOOD AND AGREED that this Right-of-Way conveys no fee to the land described herein and no rights to any of the minerals, oil, gas, coal, natural products, etc., in said land and the State of Arizona reserves the right to grant mineral and/or oil and gas leases upon said land.

IT IS FURTHER UNDERSTOOD AND AGREED that the said Grantee shall not fence the said Right-of-Way, nor exclude from the use of the surface thereof the State of Arizona or its lessees or grantees.

THE SAID GRANTOR further reserves the right to grant to others, easements and rights-of-way over and across the lands described.

NOW THEREFORE, in accordance with the provisions of A.R.S. §37-461 and agreeable to the conditions heretofore set forth, the Grantee herein is hereby authorized to locate, construct, operate and maintain said Right-of-Way over and across the State land described herein.

Grantee agrees to indemnify, hold and save Grantor harmless against all loss, damage, liability, expense, costs and charges incident to or resulting in any way from any injuries to person or damage to property caused by Grantee or resulting from the use, condition or occupation of the land.

EASEMENT CONDITIONS

1. With regard to the location, construction and maintenance of the Right-of-way:
 - (a) Grantee shall ensure full compliance with the terms and conditions of this grant by its agents, employees and contractors (including sub-contractors of any tier), and the employees of each of them.
 - (b) Unless clearly inapplicable, the requirements and prohibitions imposed upon Grantee by these terms and conditions are also imposed upon Grantee's agents, employees, contractors, and sub-contractors, and the employees of each of them.

- (c) Failure or refusal of Grantee's agents, employees, contractors, sub-contractors, or their employees to comply with these terms and conditions shall be deemed to be the failure or refusal of Grantee.
- (d) Grantee shall require its agents, contractors or sub-contractors to include these terms and conditions in all contracts and sub-contracts which are entered into by any of them, together with a provision that the other contracting party, together with its agents, employees, contractors and sub-contractors, and the employees of each of them, shall likewise be bound to comply with these terms and conditions.
2. All access roads over State land outside the Right-of-Way must be applied for and authorized in accordance with applicable regulations.
 3. No material may be removed by Grantee or its contractors without the written approval of the Commissioner.
 4. Grantee shall promptly notify the Commissioner of the amount of flora, if any, which will be cut, removed, or destroyed in the construction and maintenance of the project and shall pay the State Land Department such sum of money as the Commissioner may determine to be the full value of the flora to be so cut, removed or destroyed. Grantee shall notify the State Land Department and the Arizona Department of Agriculture 30 days prior to any destruction or removal of native plants to allow salvage of those plants where possible.
 5. Grantee shall conduct all construction and maintenance activities in a manner that will minimize disturbance to all land values including, but not limited to vegetation, drainage channels, and streambanks. Construction methods shall be designed to prevent degradation of soil conditions in areas where such degradation would result in detrimental erosion or subsidence. Grantee shall take such other soil and resource conservation and protection measures on the land under grant as determined necessary by the State Land Department.
 6. Grantee shall be required, upon completion of right-of-way construction, to make such rehabilitation measures on the State lands, including, but not limited to, restoration of the surface, revegetation, and fencing as determined necessary by the State Land Department.
 7. Upon revocation or termination of the Right-of-Way, the Grantee shall remove all equipment or facilities and, so far as is reasonably possible, restore and/or rehabilitate the land to its original condition, to the satisfaction of the Commissioner.
 8. Costs incurred by the Grantee in complying with restoration and rehabilitation requirements as determined by the State Land Department on State trust lands shall be borne by the Grantee.

9. Prior to surface disturbance, the Grantee hereof shall provide evidence of archaeological clearance to the Arizona State Land Department. Archaeological surveys and site mitigation must be conducted in accordance with rules and regulations promulgated by the Director, Arizona State Museum. In the event additional archaeological resources are detected by Grantee after receipt of archaeological clearance, all work shall cease and notification shall be given to the Director, Arizona State Museum.
10. THIS DOCUMENT is submitted for examination and shall have no binding effect on the parties unless and until executed by the Grantor (after execution by the Grantee), and a fully executed copy is delivered to the Grantee.
11. IN THE EVENT OF A 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.
12. Grantor reserves the right to relinquish to the United States pursuant to the U.S. Act of August 30, 1890, land needed for irrigation works in connection with a government reclamation project.
13. Notice of authority to cancel this contract:

This contract is subject to cancellation pursuant to A.R.S. § 38-511.
14. Native Plant Law:

If the removal of plants protected under the Arizona Native Plant Law is necessary to enjoy the privilege of this Document, the Grantee hereunder must previously acquire the written permission of the Arizona State Land Department and the Arizona Department of Agriculture to remove those plants.
15. The State of Arizona, through its State Land Department, retains ownership of the land. The use of this Right-of-Way is to be non-exclusive. This easement is sold SUBJECT to existing reservations, easements or rights-of-way heretofore legally obtained and now in full force and effect.
16. The Department does not represent or warrant that access exists over other State lands which intervene respectively between this Right-of-Way easement and the nearest public roadway.
17. SUBJECT to the express condition that when the lands cease to be put to the stated purpose, said easement shall cease and terminate. Said termination shall be effected through judicial proceedings instituted by or on behalf of any officer or employee of the State of Arizona in a court of general jurisdiction of the State.

18. Grantee shall adhere to all rules, regulations, ordinances and building codes as promulgated by local jurisdiction and any applicable agencies.
19. Grantee shall not exclude from use of State of Arizona, its lessees or grantees, or the general public the right of ingress and egress over this roadway.
20. Grantee shall acquire any necessary permits from the Arizona Department of Transportation and/or the County Highway Department prior to construction.

Within 30 days of project completion, Grantee shall submit a completed certificate of construction. (Copy Attached)

ENVIRONMENTAL INDEMNITY

Grantee shall protect, defend, indemnify and hold harmless the Grantor from and against all liabilities, costs, charges and expenses, including attorneys' fees and court costs arising out of or related to the presence of or existence of any substance regulated under any applicable federal, state or local environmental laws, regulations, ordinances or amendments thereto because of: (a) any substance that came to be located on the Right-of-Way due to Grantee's use or occupancy of the lands by the Grantee before or after the issuance of the Right-of-Way; or (b) any release, threatened release or escape of any substance in, on, under or from said Right-of-Way that is caused, in whole or in part, by any conduct, actions or negligence of the Grantee, regardless of when such substance came to be located on the Right-of-Way.

For the purposes of this Right-of-Way, the term "regulated substances" shall include substances defined as "regulated substances", "hazardous waste", hazardous substances", "hazardous materials", "toxic substances" or "pesticides" in the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the relevant local and state environmental laws, and the regulations, rules and ordinances adopted and publications promulgated pursuant to the local, state and federal laws. This indemnification shall include, without limitation, claims or damages arising out of any violations of applicable environmental laws, regulations, ordinances or subdivisions thereof, regardless of any real or alleged strict liability on the part of Grantor. This environmental indemnity shall survive the expiration or termination of this Right-of-Way and/or any transfer of all or any portion of the Premises and shall be governed by the laws of the State of Arizona.

In the event any such action or claim is brought or asserted against the Grantor, the Grantee shall have the right, subject to the right of the Grantor to make all final decisions with respect to Grantor's liability for claims or damages, (i) to participate with Grantor in the conduct of any further required cleanup, removal or remedial actions and/or negotiation and defense of any claim indemnifiable under this environmental indemnity provision, having reasonable regard to the continuing conduct of the operation/business located on the Premises and (ii) to participate with the Grantor in negotiating and finalizing any agreement or settlement with respect to any such claim or cleanup.

ADDITIONAL CONDITIONS
PUBLIC TRAILS
NON-MOTORIZED
16-103723

1. Grantee reserves the right to grant additional access rights, or any other rights not in conflict with the rights granted herein to other parties at Grantor's sole discretion.
2. Within 90 days of revocation or termination of this easement, Grantee shall remove all equipment or facilities and, at Grantor's option, obliterate and rehabilitate the trailway to the satisfaction of the Grantor.
3. Grantee shall adhere to all rules, regulations, ordinances and building codes as promulgated by local jurisdictions and any applicable agencies.
4. Grantee shall install cattle guards and/or fencing in the appropriate areas at the request of the Commissioner of the State Land Department.
5. Grantee shall not fence this right of way, unless required to do so by the Commissioner of the State Land Department prior to or subsequent to construction of the trailway.
6. Grantee shall not alter or cause ponding or any damage up or down stream of any water crossing.
7. The use of this Right of Way by the Grantee, or its successor, guests or invitees shall be entirely at the risk of the Grantee or those claiming through the Grantee.
8. Grantee agrees to conduct said operations so as to not pollute any groundwater supply.
9. Said right of way will be limited to a non-motorized vehicular traffic (hiking, bicycling, and walking). Material for trail shall be riprap, ABC fill, etc. as to maintain natural drainage and alleviate any erosion.
10. Grantee agrees to relocate trail at the request of Grantor.
11. Grantee will post signs that surrounding land is State Trust Land.

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

RUN DATE: 12-aug-1998
RUN TIME: 09:43:32

KE LEASE NUMBER: 016-103723-00-000
AMENDMENT NUMBER: 0

Page 1

LAND#	LEGAL DESCRIPTION	C.C.	ACREAGE
21.0-N-07.0-E-26-03-050-9006	M&B THRU NWNW E2W2 SWSE	0.0	5.230
TOTALS:		0.0	5.230

APPENDIX A
PAGE 1 OF 1

2165-981

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

STATE OF ARIZONA, GRANTOR
Arizona State Land Commissioner

[Signature] 9/21/98
GRANTEE Date

By: [Signature] 9-29-98
Date

ATTEST:

[Signature] 9/21/98
CITY CLERK Date

APPROVED AS TO FORM:

[Signature] 9-22-98
CITY ATTORNEY Date

(SEAL)

211 West Aspen Avenue _____
Address

Flagstaff AZ 86001 _____
City State Zip

Exhibit A

A 30 foot wide strip of land located in the west half and the southeast quarter of Section 26, Township 21 North, Range 7 East, Gila and Salt River Meridian, Coconino County, Arizona, being a portion of Arizona State Trust Land, and lying 15.00 feet on each side of the following described centerline:

Commencing at the northwest corner of said Section 26, a brass cap stamped "BLM 1970"; thence N 88° 56' 41" E (basis of bearings) 714.70 feet along the north line of said Section 26 to the **POINT OF BEGINNING;**

Thence S 41° 13' 00" E 137.29 feet;
Thence S 39° 12' 16" E 555.91 feet;
Thence S 55° 14' 57" E 79.73 feet;
Thence S 25° 00' 27" W 120.42 feet;
Thence S 33° 58' 02" W 150.18 feet;
Thence S 11° 15' 13" W 183.43 feet;
Thence S 45° 38' 17" E 177.01 feet;
Thence S 64° 37' 27" E 195.18 feet;
Thence S 34° 51' 24" E 453.62 feet;
Thence S 15° 06' 39" W 184.80 feet;
Thence S 10° 25' 09" W 155.71 feet;
Thence S 01° 08' 26" E 372.63 feet;
Thence S 55° 44' 12" E 384.40 feet;
Thence S 67° 13' 45" E 284.41 feet;
Thence S 06° 46' 17" E 126.98 feet;
Thence S 23° 41' 00" W 226.37 feet;
Thence S 40° 26' 09" W 175.06 feet;
Thence S 20° 32' 04" W 167.69 feet;
Thence S 01° 32' 53" E 79.66 feet;
Thence S 42° 26' 15" W 97.42 feet;

ACCEPTED
CITY OF FLAGSTAFF
ENGINEERING DIV

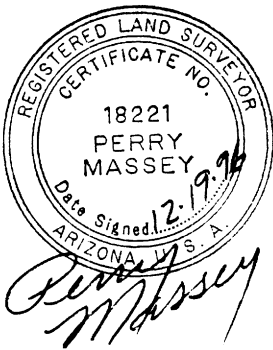
INT

DATE

Thence S 26° 29' 03" W 147.19 feet;
 Thence S 09° 04' 35" E 105.26 feet;
 Thence S 23° 26' 39" E 144.89 feet;
 Thence S 77° 46' 16" E 218.77 feet;
 Thence S 56° 35' 15" E 203.98 feet;
 Thence S 57° 22' 47" E 160.98 feet;
 Thence S 77° 47' 38" E 146.36 feet;
 Thence S 64° 18' 46" E 304.18 feet;
 Thence S 73° 13' 17" E 127.50 feet;
 Thence S 62° 16' 50" E 238.41 feet;
 Thence S 67° 37' 38" E 230.92 feet;
 Thence S 68° 22' 51" E 123.00 feet;
 Thence S 24° 51' 37" E 196.62 feet;
 Thence S 41° 31' 24" W 498.93 feet;
 Thence S 50° 33' 56" W 412.08 feet;
 Thence S 00° 32' 15" E 27.51 feet to the TERMINUS POINT.

The sidelines of said strip to be shortened or lengthed to terminate at the north line of said Section 26.

Containing 5.23 acres, more or less, as shown on the attached Exhibit A-1, which is made a part hereof by this reference.



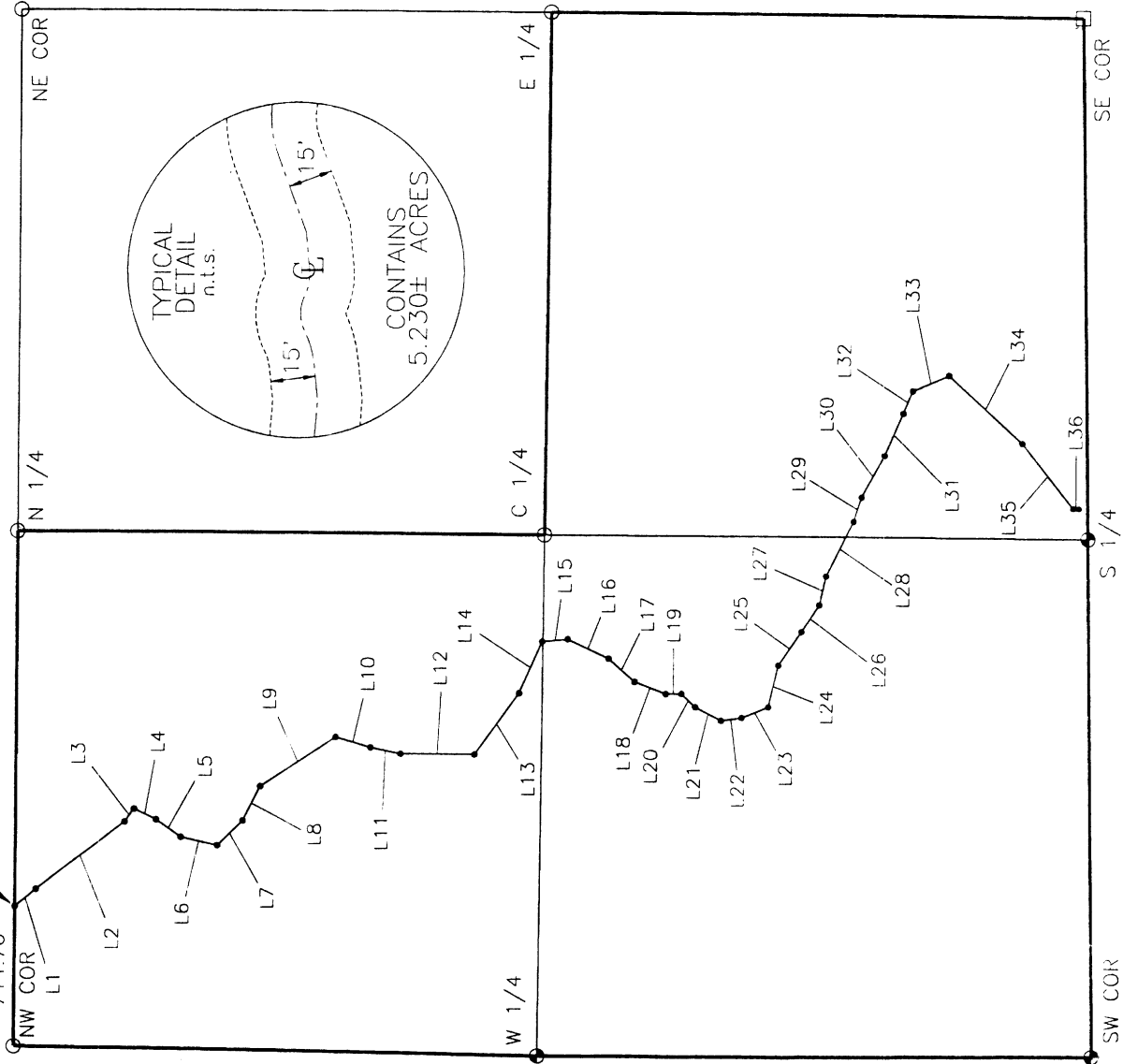
ACCEPTED
 CITY OF FLAGSTAFF
 ENGINEERING DIV

 INT DATE

F.U.T.S. Fisher Point Link
 Descriptive Title

03-96025
 City File No.

(Basis of Bearings)
N88°56'41"E
714.70'

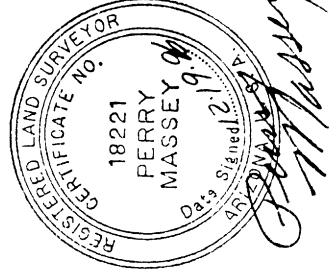


LINE	BEARING	DIST.
L1	S01°32'53"E	79.66'
L2	S42°26'15"W	97.42'
L3	S26°29'03"W	147.19'
L4	S09°04'35"E	105.26'
L5	S23°26'39"E	144.89'
L6	S77°46'16"E	218.77'
L7	S56°35'15"E	203.98'
L8	S57°22'47"E	160.98'
L9	S77°47'38"E	146.36'
L10	S64°18'46"E	304.18'
L11	S73°13'17"E	127.50'
L12	S62°16'50"E	238.41'
L13	S67°37'38"E	230.92'
L14	S68°22'51"E	123.00'
L15	S24°51'37"E	192.62'
L16	S41°31'24"W	498.93'
L17	S50°33'56"W	412.08'
L18	S00°32'15"E	27.51'

LINE	BEARING	DIST.
L1	S41°13'00"E	137.29'
L2	S39°12'16"E	555.91'
L3	S55°14'57"E	79.73'
L4	S25°00'27"W	120.42'
L5	S33°58'02"W	150.18'
L6	S11°15'13"W	183.43'
L7	S45°38'17"E	177.01'
L8	S64°37'27"E	195.18'
L9	S34°51'24"E	453.62'
L10	S15°06'39"W	184.80'
L11	S10°25'09"W	155.71'
L12	S01°08'26"E	372.63'
L13	S55°44'12"E	344.40'
L14	S67°13'45"E	254.41'
L15	S06°46'17"E	174.98'
L16	S23°41'00"W	244.37'
L17	S40°26'09"W	174.06'
L18	S20°32'04"W	167.69'

- ALUMINUM CAP
- BRASS CAP
- OPEN PIPE

SITUATED IN
the W1/2 and SE1/4
SECTION 26, T21N, R7E
G & SRM
COCONINO COUNTY
ARIZONA



ACCEPTED
CITY OF FLAGSTAFF
ENGINEERING DIV

IMT _____ DATE _____

CITY OF FLAGSTAFF

EXHIBIT A-1

Drawn by:
Chris W. Folker

ENGINEERING DIVISION

CITY FILE NO. 03-96025

Date:
12/19/96