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790-146-99

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LAND TITLES & RECORDS
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☒ Certified # 2 166 911 77 ☐ Air Mail ☐ Return Receipt Requested

Date: March 16, 1999

To: **Manager, Land Titles & Records, Albuquerque, New Mexico**

From: **Office of Navajo and Hopi Indian Relocation**
P.O. Box KK, Flagstaff, AZ 86002

Please record the attached document(s), identified below by items 1 thru 3.

- (1) Reservation Code 790.
(2) ☐ Allotted lands, No. ☒ Tribal lands.
(3) Document Type 23
(4) Realty File No. NL-SL-99-002

Remarks: DPS Contract No. 97-266 between the Office of Navajo and Hopi Indian Relocation and Arizona Department of Public Safety for a 0.83 radio communication site in Section 19, T20N, R30E, G&SRM, Sanders, Apache County, Arizona approved October 6, 1997.

Len Chester
Len Chester **Signature**
Assistant Land Use Manager

☐ Certified # ☐ Air Mail ☐ Return Receipt requested

Date: MAR 29 1999

Return to Sender

The documents identified by items 1 thru 3 above have been recorded in the Land Titles & Records, Albuquerque, New Mexico; see block in the upper right corner of this page for date and time of recording and document number assigned.

☒ Document attached ☐ Document retained and filed

Dean A. Montoya

For Manager, Land Titles & Records

For Title Plant use only:

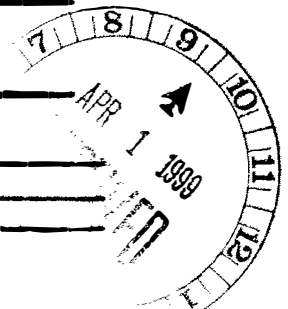
☐ Index posted by Date ☐ Microfilmed by Date

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LEASE

DPS CONTRACT NO. 97-266

THIS LEASE, is made and entered into this 6th day of October, 1997, by and between the Office of Navajo and Hopi Indian Relocation, hereinafter called the Lessor, whose address is P.O. Box KK, Flagstaff, Arizona 86002 and the Arizona Department of Public Safety, an Agency of the State of Arizona, hereinafter called the Lessee, whose address is P.O. Box 6638, Phoenix, Arizona 85005-6638 under the provisions of P.L. 93-531, as amended by P.L. 96-305 and P.L. 100-666.

WITNESSETH:

LESSOR hereby leases to Lessee and Lessee hereby leases from those premises hereinafter called "Premises" consisting of:

Commencing at the Northwest corner of Section 19, Township 20 North, Range 30 East, Gila and Salt River Meridian, on the New Lands at Sanders, Apache County, Arizona; thence run South 74°34'00" East, 3,030.64 feet to the true point of beginning; thence run South 78°10'30" East, 240.00 feet; thence run South 11°49'30" East, 150.00 feet to the true point of beginning. Said tract comprising of 0.83 acre, more or less.

1. TERM.

The term of this Lease is for 20 years (or until sooner terminated as herein provided), commencing on September 22, 1997 and expiring on September 22, 2017. At the termination of the initial Lease term, the Lessee shall have the option to renew this Lease on a year-to-year basis, for a maximum of four (4) one (1) year option periods. This option is cancelable by Lessee after giving the Lessor notice of such action at least ninety (90) days prior to the termination of the initial Lease term and for each option term.

2. PURPOSE.

This Lease shall be for the purpose of using and maintaining the Premises exclusively by the Arizona Department of Public Safety to provide a radio communications site.

3. RENT.

Lessee agrees to pay as gross rental, at such a place as may be designated from time to time by Lessor, the sum of two hundred and forty dollars (\$240.00) per year in advance.

The total annual gross rent shall include all taxes. Lessor agrees not to charge Lessee any additional expenses. This rental rate is fixed for the duration of the Lease and option periods.

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Each year Lessee shall prepare and issue a check to the Lessor upon receipt of an invoice from the lessor. The check shall be mailed to the address stated in paragraph 19 of this Lease. Any partial year shall be prorated for that portion of the year Lessee occupies the Premises.

4. TERMINATION.

This Lease may be terminated by either the Lessee or Lessor by the giving of written notice at lease ninety (90) days before the anniversary date. The anniversary date shall be that date annually starting from the date this Lease is signed. Upon the expiration of time specified in the notice, rights of Lessee and Lessor shall not incur any liability for breach of contract or covenant for the future payment of rent.

5. REPAIRS.

Lessee shall be responsible for repairs to structures which they have constructed and occupy at Lessee's sole expense.

6. ACCESS.

The Lessee shall have the right of ingress and egress to all or any part of the leased Premises, and the exclusive privilege of entering in and upon said land for the purpose of using and occupying the whole or any part thereof as a radio repeater site and in general, of doing any and all things incident to or necessary for the operation and maintenance of such radio repeater site. Access to the site must be from existing roadways. The right of ingress and egress is guaranteed even where such ingress and egress is across sites leased by Lessor to others in this vicinity.

Lessee consents to and guarantees ingress and egress in and across its leased premises to other radio repeater operators who may be leasing similar sites from Lessor in the immediate vicinity of Lessee's premises.

7. IMPROVEMENTS AND ALTERATIONS.

The full title, ownership and possession of any equipment, improvements, or property of any kind or description whatsoever, belonging to the Lessee and placed by the Lessee on said leased premises shall be and remain the Lessee and said property and improvements may be removed and taken from said premises by the Lessee at any time before or within three months after the termination or expiration of this Lease.

Lessee shall not make any alterations, additions or improvements without the prior written consent of Lessor. Any such alterations, additions or improvements shall be made by Lessee at Lessee's sole cost and expense.

8. USE OF PREMISES.

The Premises described above are leased to Lessee for the sole purpose of providing Lessee's governmental services. Lessee agrees to comply with applicable laws, ordinances, regulations and building codes now or hereafter in force in connection with its use of the leased Premises.

9. COMPLIANCE WITH THE LAW.

The Lessor and Lessee shall promptly execute and comply with all statutes, rules, orders, building codes, fire codes, ordinances, requirements and regulations of the City, County, State and Federal governments, including O.S.H.A., which are applicable to the Premises. Nothing herein contained shall be construed to restrict the Lessor or Lessee from contesting the validity of any such regulation, rule or ordinance, provided the contestor indemnifies the other party to its reasonable satisfaction against the consequences of non-compliance during the period of dispute.

10. EMINENT DOMAIN.

In the event the building, the land on which it is located, or any portion of the leased premises is taken under governmental condemnation, or a conveyance is made under the threat of condemnation proceedings, Lessee will be entitled to recover all personal property and all fixtures and improvements installed by Lessee.

11. ASSIGNMENT AND SUBLEASE.

Lessee shall not assign, transfer, or encumber this Lease nor sublet the leased Premises or any portion thereof without the prior written consent of Lessor, and any such act shall constitute a breach of this Lease. Consent to an assignment, subletting, occupation or use by other persons shall not be unreasonably withheld and shall not release Lessee from any of Lessee's obligations hereunder or be deemed to be a consent to any subsequent assignment, subletting, occupation or use.

12. SUBORDINATION AND ATTORNMENT.

Lessor reserves the right to place liens or encumbrances on said property or any part thereof or interest herein superior in lien and effect to this Lease. This Lease, at the option of Lessor, shall be subject and subordinate to any and all such liens or encumbrances now or hereafter imposed by Lessor without the necessity of the execution and delivery of any further instruments on the part of the Lessee to effectuate such subordination. Notwithstanding the foregoing, Lessee covenants and agrees to execute and deliver upon demand such further instruments evidencing such subordination of this Lease as may be requested by Lessor.

In the event of foreclosure of any mortgage, deed of trust or other lien, Lessee will attorn to the owner who acquires title to the property and will recognize such owner as Lessor under this Lease. Lessee hereby waives any rights to terminate this Lease because of the foreclosure of any such mortgage, deed of trust or other security instrument provided that neither Lessor nor the new owner is not in default of any provision of this Lease. Lessor must require any new owner to agree to be bound by all of the terms of this Lease.

13. SALE BY LESSOR.

In the event of a sale or conveyance by Lessor of the Premises, the same shall operate to release Lessor as of the date from any and all future liability under this Lease. The Lease shall not be affected by such sale, and Lessee agrees to attorn to the purchaser of the Premises.

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14. SELF INSURANCE BY LESSEE.

Lessor and Lessee acknowledge that Lessee is self-insured. This self insurance protects the Lessee only.

15. TIME.

Time is of the essence for the Lease and each and all of its provisions.

16. DEFINED TERMS AND MARGINAL HEADINGS.

The word "Lessor" and "Lessee" as used herein shall include the plural as well as the singular. If more than one person is named as Lessee, the obligations of such persons are joint and several. The marginal headings and titles to the articles of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

17. HOLDOVER.

Should Lessee hold possession after expiration of the Lease term or any renewal thereof, Lessee shall become a Lessee on a month-to-month basis and the rent shall be one hundred percent (100%) of the immediately preceding rental rate. Otherwise the same terms and conditions of this Lease shall prevail.

Either Lessor or Lessee shall have the right to terminate any holdover tenancy with thirty (30) days written notice to the Lessee or Lessor's last known address without incurring any penalty or damages.

18. ATTORNEY'S FEES.

In the event of any legal action or proceeding brought by either party against the other arising out of this Lease, the prevailing party shall be entitled to recover costs and reasonable attorney's fees, as determined by the court, not the jury, based upon the prevailing hourly wage for attorneys in Phoenix, Arizona, and such other matters deemed relevant by the court, and such amount shall be included in any judgement rendered in such proceedings.

19. WAIVER.

No waiver by Lessor of any provision of this Lease or of any breach by Lessee hereunder shall be deemed to be a waiver of any other provision hereof, or of any subsequent breach by Lessee of the same or any other provision. Lessor's consent or approval of any act by Lessee requiring Lessor's consent to or approval shall not be deemed to render unnecessary the obtaining of Lessor's consent to or approval of any subsequent act of Lessee.

20. NOTICES.

All notices to be given by one party to the other shall be in writing, mailed or delivered to each as follows:

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LESSOR: Office of Navajo and Hopi Indian Relocation
P.O. Box KK, 201 East Birch
Flagstaff, Arizona 86002
Telephone: (520) 779-2721

LESSEE: Arizona Department of Public Safety
Facilities Management Section
P.O. Box 6638, 2102 West Encanto Boulevard
Phoenix, Arizona 85005
Telephone: (602) 223-2470

or elsewhere, as either party may from time to time designate by written notice to the other.

21. ESTOPPEL CERTIFICATE.

Lessee shall, upon not less than ten (10) days prior written request by Lessor, deliver to Lessor a statement in writing certifying: (1) that this Lease is unmodified and in full force and effect or if there have been modifications, that this Lease as modified is in full force and effect; (2) the dates to which rent and other charges have been paid, and (3) that Lessor is not in default under any provisions of this Lease or, if in default, a detailed description of such default.

22. AGREEMENTS IN WRITING.

All negotiations, considerations, representations, and understandings between the parties are incorporated and expressly stated herein and may be modified and altered only by agreement in writing between the parties.

23. PROHIBITION OF DISCRIMINATION.

The Lessor agrees to comply with State of Arizona Executive Order No. 75-5, "Prohibition of Discrimination in State Contracts, Nondiscrimination in Employment by Government Contractors and Subcontractors."

24. LIENS.

The Lessee shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Lessee. In the event that Lessee shall not, within ten (10) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a proper bond, Lessor shall have, in addition to all other remedies provided herein by law, the right to cause the same to be released by such means as he shall deem proper, including the payment of the claim giving rise to such lien. All such sums paid by Lessor and all expenses incurred by him in connection therewith shall be considered additional rent and shall be payable by Lessee on demand with interest at ten percent (10%) per annum.

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25. RIGHT OF RECOVERY - INDEMNIFICATION OF LESSOR.

Neither the Lessor nor the United States Government, nor their officers, agents, and employees shall be liable for any loss, damage, or injury of any kind whatsoever to the person or property of the Lessee or sublessee or of any other person whomsoever, caused by any use of the leased premises, or by any defect in any structure erected thereon, or arising from any accident, fire, or other casualty on said premises or from any other causes whatsoever; and Lessee, as a material part of the consideration for this lease, hereby waives on Lessee's behalf all claims against Lessor and/or the United States Government and agrees to hold Lessor and/or the United States Government free and harmless from liability for all claims for any loss, damage, or injury arising from the use of the premises by Lessee, together with all costs and expenses in connection therewith.

26. INSPECTION AND AUDIT.

In accordance with A.R.S. §35-214, all books, accounts, reports, files and other records relating to this Lease shall be subject at all reasonable times to inspection and audit by the Lessee, the State Auditor, or their agents, or employees at the Lessor's office or at the Lessee's offices designated in paragraph 20 at any time during the terms of the Lease and for five (5) years after termination thereof.

27. ARBITRATION.

The parties agree to use arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. §12-1518.

28. ASSIGNMENT OF OVERCHARGES.

The parties recognize that in actual economic practice, overcharges resulting from anti-trust violations are in fact borne by the purchaser. Therefore, Lessor hereby assigns to Lessee any and all claims for such overcharges.

29. CONFLICT OF INTEREST.

All parties hereby are put on notice that this agreement is subject to cancellation by the Governor pursuant to A.R.S. §38-511, the provisions of which are incorporated herein.

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IN WITNESS WHEREOF, the parties hereto have executed this instrument by proper persons thereunto duly authorized so to do the day and the year first above written.

LESSOR:

By *[Signature]* Date 10/6/97
Position Executive Director

State of Arizona: FOR AND ON BEHALF OF THE LESSEE

By *[Signature]* Date 9/22/97
Position Richard G. Carlson
Assistant Director

Grant Woods, Attorney General

By _____ Date _____
NOT NECESSARY Per R. SAUNDERS
DPS LEGAL

Assistant Attorney General

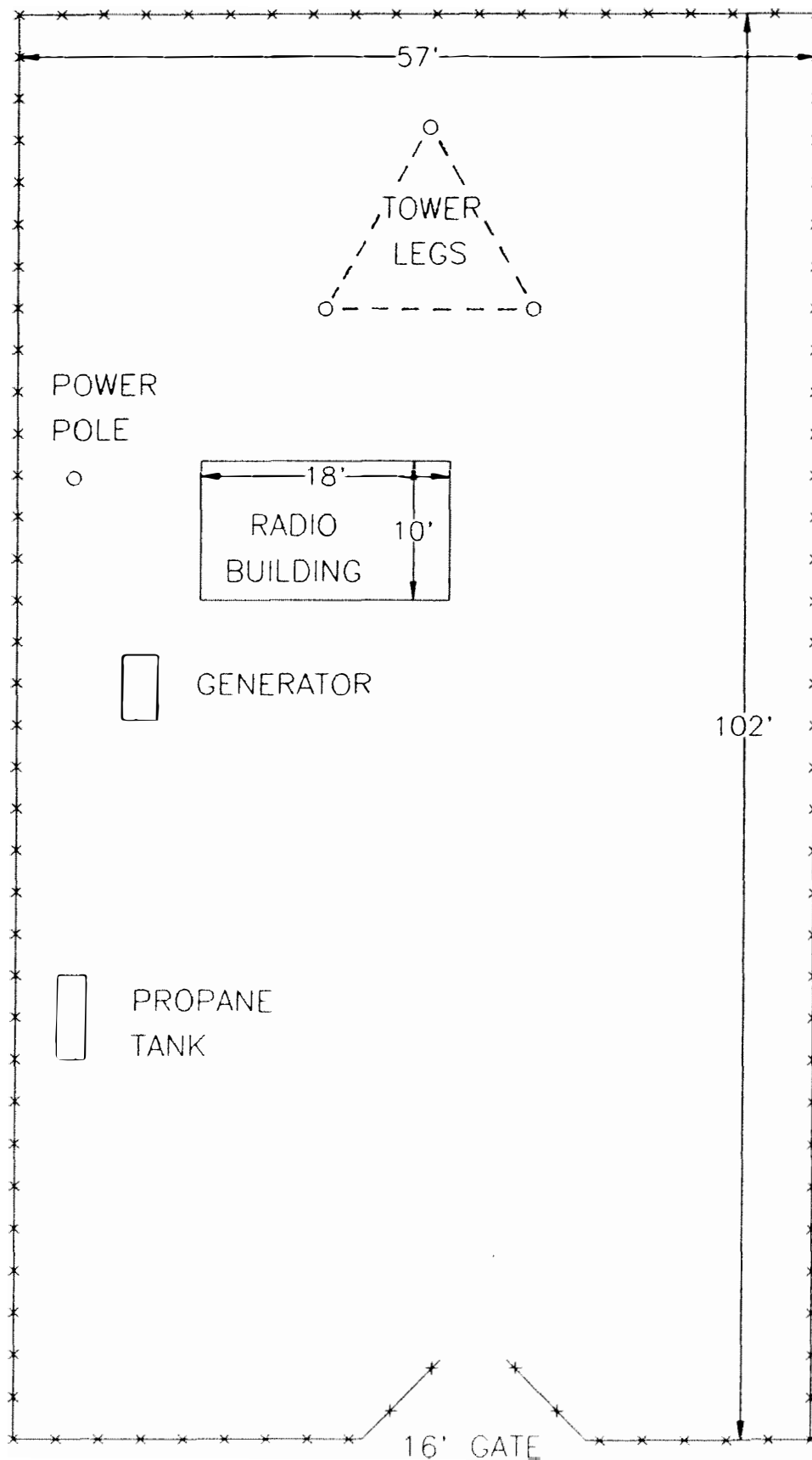
Approved, D.P.S. Legal Section

By *[Signature]* Date 9-18-97

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ROBERTS RANCH MOUNTAINTOP COMMUNICATIONS SITE



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