

**AGREEMENT SUMMARY
FOR UNIMPROVED OR VACANT LANDS**

<p>LESSOR STATE OF ARIZONA by and through its ARIZONA DEPARTMENT OF TRANSPORTATION</p>

Project:	010 MA 149 H8768 V1D	Lessee:	CITY OF TEMPE
Highway:	PHOENIX – CASA GRANDE	Location:	Between Ray Road and Warner Road
Section:	MARICOPA TI-10 SR 202		
Parcel No.:	7-1963A		
Agreement No.:	CRA-1048C		

1. Term of the Agreement
2. Rental Rate
3. Cancellation Clause
4. Use of Subject Property
5. Compliance with Environmental Laws
6. Maintenance of Subject Property
7. Mechanics Liens
8. Untenantable Property Due to Damage
9. Right of Entry by Lessor
10. Inspections and Testing by Lessor
11. Liability of Lessor
12. Indemnification
13. Insurance
14. Environmental Waste Indemnification by Lessee
15. Utilities and Services
16. Relocation Provisions
17. Sale of Subject Property by Lessor
18. Transfer of Ownership by Lessor
19. Assignment of Agreement by Lessee
20. Nondiscrimination Regulations
21. Default by Lessee
22. Termination for Hazardous Waste
23. Return of Subject Property to Lessor
24. Addenda
25. Addresses of Lessor and Lessee

**ARIZONA DEPARTMENT OF TRANSPORTATION
INTERMODAL TRANSPORTATION/RIGHT OF WAY GROUP
PROPERTY MANAGEMENT SECTION**

RENTAL AGREEMENT FOR UNIMPROVED OR VACANT PROPERTIES

Project:	010 MA 149 H8768 V1D	Agreement:	CRA-1048C
Highway:	PHOENIX – CASA GRANDE	Monthly Rental Payment:	-Rent Waived-
Section:	MARICOPA – TI-10 SR 202		
Parcel:	7-1963A		
Assessor No.:	301-59-017A & 301-59-017B		

The State of Arizona, by and through the Arizona Department of Transportation (ADOT), hereinafter referred to as Lessor, does hereby authorize the City of Tempe, hereinafter referred to as Lessee, occupy the property located at between Ray Road and Warner Road East of I-10, in Tempe, Arizona, and containing approximately 40 acres. Said property is more particularly described as part of the SW¼, NE¼, Sec. 20, T. 1S. R. 4E., G & SRB & M, Maricopa County as shown on the attached map.

THIS AGREEMENT IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. Term of the Agreement

The term of this Rental Agreement will be for a 10-year period with an option to renew for two (2) additional 10-year periods. This Agreement is cancelable at any time with the mutual agreement of Lessor and Lessee. Further, Lessee agrees that should Lessor require the property for transportation purposes, Lessor may cancel this Agreement by sending written notification to the Lessee at least six (6) months prior to the intended effective date of cancellation.

LESSEE acknowledges the existence of two (2) outdoor advertising displays situated on the leased premises. These displays are owned and operated by Outfront Outdoor (f.k.a. CBS Outdoor). Lessee acknowledges those rights granted in instrument # 20140620265 pertaining to the billboards, easements for access, utilities, and visibility. Furthermore, lessee agrees to use the leased premises in a manner consistent with said easements, and cause no interference to same.

2. Rental Rate

The leased area contains approximately forty (40) acres as exhibited on the attached map. LESSOR agrees to waive the annual rent payment in lieu of LESSEE assuming responsibility for the maintenance of the property as noted in Section 7.

3. Cancellation Clause

This Agreement is subject to cancellation by the Governor pursuant to A.R.S. 38-511.

4. Use of Subject Property

This property is for the sole use of Lessee, and shall only be used for the purpose of retention/detention basin for storm water runoff, and for recreational and/or park uses, and said use shall be operated in accordance with prevailing standards and criteria established therefore, by the applicable governing agencies and without creating or causing to be created, nuisances or hazards to the public health or safety or interfering with the rights or business activities of other tenants. This shall be the only use

permitted on this site during the term of this Agreement. Lessee further agrees not to use or permit any use of property for any illegal or immoral purpose and to comply with all state laws or local ordinances concerning said property and the use thereof. Lessee agrees to immediately notify Lessor of any change in Lessee's operation on the premises that will change, or has the potential to change, Lessee's or Lessor's obligations or liabilities under the environmental laws.

That if LESSEE desires to construct improvements on the subject property, the LESSEE shall first submit a written request, and copies of all construction plans for the proposed project. LESSEE shall have written permission from LESSOR prior to the start of any said construction. LESSEE agrees that any improvements constructed by LESSEE, on the subject property shall not displace any portion of the retention/detention basin. On or before the termination of this agreement, LESSEE at LESSEE's expense, shall remove any and all improvements placed on said parcel by LESSEE. If removal of said improvements defaces the subject property, LESSEE at LESSEE's expense, shall be responsible for replacing or repairing any damage caused by such removal prior to termination of this agreement. Should it be the LESSEE's desire to allow said improvements to remain on the leased property, the improvement will become the sole and separate property of the LESSOR at no cost to the LESSOR. LESSEE agrees to accept the property in its present condition, specifically subject to the bridge girders located there. LESSEE may dispose of the girders as it deems necessary. LESSOR neither warrants the condition of said girders nor accepts responsibility for consequences arising from the use or misuse.

5. Compliance with Environmental Laws

Lessee shall, at Lessee's own expense, comply with all present and hereinafter enacted environmental laws and any amendments thereto, affecting Lessee's operation on the leased premises. Lessee shall immediately notify Lessor should it receive any correspondence or communication from any governmental entity regarding the application of environmental laws to the premises or Lessee's operation on the premises. Any environmental assessments, studies, or audits known by Lessor, may be disclosed to third parties as a result of public disclosure laws, and will be disclosed to other state and federal agencies that are concerned with the enforcement of environmental laws and regulations.

6. Maintenance of Subject Property

That LESSEE agrees to maintain leased property in a neat, clean and orderly condition at all times during occupancy, and not permit debris to accumulate at any time; not to commit, suffer or permit any waste of said property or any acts to be committed in violation of any laws or ordinances. LESSEE further agrees to provide adequate weed and dust control and to appropriately manage problems associated with standing water, including but not limited to insect control. LESSEE accepts property "as is" and may not require LESSOR to expend funds for any purpose whatsoever. LESSEE agrees that the existing fence around the retention/detention basin shall remain in place and shall be maintained by LESSEE at no expense to LESSOR

7. Mechanics Liens

Lessee shall keep the property free from any liens arising from work performed, materials furnished or obligations incurred by Lessee and shall indemnify, hold harmless and defend Lessor from any liens and encumbrances arising from any work performed or materials furnished by or at the direction of Lessee. Upon completion of any approved construction activity, copies of signed lien waivers shall be supplied to Lessor by Lessee.

8. Untenantable Property Due to Damage

In the event the Lessor's improvements are partially damaged or totally destroyed by fire, flood, accident or acts of God, Lessor shall have the option to repair/restore said improvements or terminate this Agreement by delivering written notice of immediate termination to Lessee. If this Agreement is terminated, Lessee shall be entitled to a proration of the unused rent. If a portion of the property is rendered untenantable, Lessor may elect to reduce the rental rate proportionately until the property has been restored.

9. Right of Entry by Lessor

Lessee acknowledges that Lessor's needs and requirements may necessitate survey or preliminary engineering studies. Therefore, Lessor specifically reserves the right of entry to the occupied premises at any and all reasonable times. Lessor hereby agrees to give Lessee at least seven (7) days notice to enter the property for this purpose. In the event such entry causes damage to tenant improvements or crops, no monetary reimbursements will be forthcoming.

10. Inspections and Testing by Lessor

Lessor reserves the right to inspect the premises periodically to determine the general condition and upkeep of the property. It is also agreed that Lessor or its contractors, shall have the right at any time during regular business hours to come on the premises to visually inspect for hazardous waste, and other pollutants; and may test for such hazardous waste, or other pollutants, at any time it reasonably believes hazardous waste or pollutants are on the premises. Lessor will give Lessee not less than two (2) days notice of such inspections. Lessee will not unreasonably withhold permission for such inspections. In the event Lessor determines to test, it or its contractor may come on the premises during regular business hours, but shall have the right to do its testing during or after regular business hours. The testing procedures shall not unreasonably interfere with Lessee's operation. The results of visual inspection on testings will be disclosed in accordance with Section (11) "Compliance with Environmental Laws."

11. Liability of Lessor

This Agreement is made upon the express condition that Lessor does not protect or insure against loss of personal property or improvements owned by Lessee and Lessee waives the right to claim damages from Lessor for any damage resulting to said property in the event damaged or destroyed by fire or any other cause which is not the direct result of negligence of Lessor. Lessee further shall hold and save harmless Lessor, or any of its departments, agencies, boards, commissions, agents, or employees from all costs and damages to any person arising out of any injuries or losses caused by Lessee, its agents or employees, licensees, invitees, trespassers, or any third parties' willful or negligent act during occupancy of the subject property.

12. Indemnification

13. Insurance

14. Environmental Waste Indemnification by Lessee

Lessee shall indemnify and hold harmless Lessor, its employees, and agents from and against any and all loss, damage, and expense (including, but not limited to, reasonable investigation, legal fees, and expenses), including but not limited to, any claim or action for injury, liability, or damage to persons or property, and any and all claims or actions brought by any person, firm, governmental body, or other entity, alleging or resulting

from or arising from or in connection with contamination of, or adverse effects on the environment, or violation of any environmental law or other statute, ordinance, rule, regulation, judgment, or order of any government or judicial entity, and from and against any damages, liabilities, costs, and penalties assessed as a result of any activity by the LESSEE or its agents or operation on the property by the LESSEE or its agents during the term of this Agreement. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the environmental laws for any action that occurred on the property. Lessee's failure to abide by the terms of this paragraph shall be restrainable by injunction.

15. Utilities and Services

Any and all utilities and other services required by Lessee shall be in the name of and paid by Lessee.

16. Relocation Provisions

Notwithstanding anything to the contrary, this Agreement is not subject to the provisions of A.R.S. 28-7141, et seq. and rules promulgated thereunder and 42 U.S.C. 4601-4639 and regulations promulgated thereunder both as now existing or as may hereafter be amended during the term of this Agreement. This clause shall not extend any right to Lessee or impose any liability or duty upon Lessor provided for the herein referenced statutes and regulations.

17. Sale of Subject Property by Lessor

Lessee agrees in the event Lessor desires to sell said property; Lessee will make no claim to prevent such sale. However, said sale shall be subject to the terms and conditions of this Agreement then in effect and nothing in this Agreement shall prevent Lessee from purchasing the property as any other member of the public.

18. Transfer of Ownership by Lessor

Any transfer of ownership of, or rights in, the subject property by the Lessor to any other governmental agency shall be conditional to this Agreement.

19. Assignment of Agreement by Lessee

Lessee shall not assign its interest herein, and shall not sublease the aforesaid premises or permit same to be used by any unauthorized person or firm.

20. Nondiscrimination Regulations

Lessee, for itself and its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that 1) no person on the grounds of race, color, sex, familial status, disability, religion or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities 2) in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, familial status, disability, religion or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination 3) Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Agreement

and to re-enter and repossess said land and improvements thereon, and hold the same as if said Agreement had never been made or issued.

21. Default by Lessee

Should Lessee fail to maintain continuous liability insurance, this Agreement shall terminate immediately. Should Lessee default on any other term or condition of the Agreement, specifically failure to submit the rental payment as specified herein, the Agreement shall terminate in thirty (30) days. In the event of default by Lessee, Lessor shall have all remedies as provided by law. Unless otherwise provided by statute, Lessor or Lessee will pay to the prevailing party, court costs and attorneys' fees in a reasonable sum in any legal action brought forth.

22. Termination for Hazardous Waste

Should Lessor have reasonable grounds to believe hazardous waste, or other pollutants, are being manufactured, stored, or dumped on the premises by the Lessee or its agents, Lessor, may at its discretion, terminate this Agreement on fifteen (15) days notice. Termination does not relieve Lessee of its liability or responsibility to clean up, including appropriate consulting costs, the hazardous waste or pollutants.

23. Return of Subject Property to Lessor

Upon vacating the subject property, Lessee agrees to leave the premises in the same condition or better than existed on the first day of occupancy, allowing for ordinary and normal usage, and to reimburse Lessor for any damage done to said property caused by Lessee's occupation or tenancy, other than due to normal use. This tenancy is temporary by reason of the fact that Lessor have the right to acquire the premises for transportation purposes, and Lessee is to vacate said premises at any time within six (6) months after receipt of a notice as stated in Section (1) "Term of the Agreement". Nothing herein shall be deemed a waiver of Lessor's right to demand and obtain possession of said premises in accordance with the law in the event of a violation on part of Lessee of any of the terms or conditions hereof.

24. Addenda

Any addenda to this Agreement are by this reference made a part hereof as though fully set forth therein.

25. Addresses of Lessor and Lessee

Any notices to or demand upon either party hereto by the other pursuant to this Agreement shall be in writing and shall be delivered in person to the other party or forwarded by certified mail, postage prepaid, addressed as follows:

To LESSOR AT:	
Arizona Department of Transportation	
Intermodal Transportation Division	
Right of Way Group, Property Management Section	
205 South 17th Avenue, Mail Drop #612E	
Phoenix, Arizona 85007	
(602) 712-7587	Monday-Friday 8am-5pm
(602)	Emergency only Phone No.
To LESSEE AT:	
Name:	Public Works Director – City of Tempe
Address	31 E. Fifth Street

