



**BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS**

Requested Board Meeting Date: December 13, 2016

or Procurement Director Award

Contractor/Vendor Name (DBA): Fidelity National Title Agency, Inc., Trust No. 10,808

Project Title/Description:

Southwest Wilmot Corridor/Agreement to Donate Real Property (Acq-0355)

Purpose:

Pima County Regional Flood Control District (the "District") will acquire, by donation, tax parcel 305-01-002A, located along the east side of Wilmot Road, south of Interstate 10, in Township 16 South, Range 15 East, Section 18, G&SRM, Pima County, Arizona.

Procurement Method:

Exempt pursuant to Pima County Code 11.04.020.

Program Goals/Predicted Outcomes:

The District will acquire floodprone land at no cost.

Public Benefit:

Floodprone land will be removed from future development.

Metrics Available to Measure Performance:

This property consists of approximately 150.36 acres and has been valued at \$286,000. The property will be donated to the District and the District will pay closing costs not to exceed \$2,700.

Retroactive:

N/A

Original Information

Document Type: CT Department Code: PW Contract Number (i.e., 15-123): 17*0205

Effective Date: 12/13/2016 Termination Date: 12/12/2017 Prior Contract Number (Synergen/CMS): _____

Expense Amount: \$ 2,700.00 Revenue Amount: \$ _____

Funding Source(s): Tax Levy

Cost to Pima County General Fund: None

Contract is fully or partially funded with Federal Funds? Yes No Not Applicable to Grant Awards

Were insurance or indemnity clauses modified? Yes No Not Applicable to Grant Awards

Vendor is using a Social Security Number? Yes No Not Applicable to Grant Awards

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____

Amendment No.: _____ AMS Version No.: _____

Effective Date: _____ New Termination Date: _____

Expense Revenue Increase Decrease Amount This Amendment: \$ _____

Funding Source(s): _____

Cost to Pima County General Fund: _____

*To: COB 11-30-16 (11)
Ver. - 1
4995 - 11*

Procure Dept 11/29/16 PM 09:33

Contact: Dana Hausman

Department: Public Works - Real Property

Telephone: 724-6713

Department Director Signature/Date:

[Signature] 11-16-16

Deputy County Administrator Signature/Date:

[Signature] 11/22/16

County Administrator Signature/Date:

(Required for Board Agenda/Addendum Items)

[Signature] 11/23/16

CONTRACT
NO. <u>CT.PW-17-205</u>
AMENDMENT NO. _____
<small>This number must appear on all invoices, correspondence and documents pertaining to this contract.</small>



PIMA COUNTY REAL PROPERTY SERVICES

PROJECT: Accept Donation of Real Property

DONOR: Fidelity National Title Agency, Inc., Trust No. 10,808

AMOUNT: \$2,700.00 for closing costs

FUNDING: FLAP – Tax Levy

AGREEMENT TO DONATE REAL PROPERTY

1. **Parties; Effective Date.** This agreement ("**Agreement**") is entered into by and between **Fidelity National Title Agency, Inc.**, an Arizona corporation, as Trustee under Trust No. 10,808 (collectively "**Donor**") and **Pima County Flood Control District**, a political taxing subdivision of the State of Arizona ("**Donee**"). Donor and Donee are hereinafter referred to collectively as the "**Parties**". This Agreement shall be effective on the date Donor and Donee have executed this Agreement (the "**Effective Date**"). The date Donee signs is the date this Agreement is signed by the Chair of the Board of Directors of the Pima County Flood Control District.

2. **Background & Purpose.**

2.1. Donor is the owner of that certain real property in Pima County, Arizona consisting of approximately 150.36 acres legally described and depicted, respectively, in **Exhibit A** and **Exhibit A-1** attached hereto and made a part hereof, including all

structures and improvements situated thereon, if any (hereinafter collectively referred to as the "**Property**");

2.2. Donor desires to donate the Property to Donee; and

2.3. Donee desires to accept the Property, subject to the express terms and conditions of this Agreement.

3. **Donation.**

3.1. Donor agrees to donate the Property, including all wells, water rights and mineral rights appurtenant to the Property, in which Donor has an interest, to Donee, free and clear of all liens and encumbrances, except as set forth on **Exhibit B** attached hereto.

3.2. Donor will execute a Special Warranty Deed (the "**Deed**") and any and all related documents conveying the Property to Donee upon presentation of said documents to Donor by Donee's agents or representatives.

3.3. Donor acknowledges and agree that the decision to donate the Property was made without any undue influence or coercive action of any nature and that the right to an appraisal and to just compensation is hereby waived.

4. **Inspection and Access.**

4.1. Inspection Period. For a period of forty-five (45) days commencing on the Effective Date (the "**Inspection Period**"), Donee (and its respective employees, agents, representatives and contractors) shall have the right to enter upon the Property at reasonable times and from time to time, upon forty-eight (48) hours notice by telephone to Donor, for the purpose of viewing, inspecting, testing, appraising, surveying and studying the Property ("**Inspection**"). Donee shall, promptly following any such Inspection, return the Property to the condition it was in immediately prior to such Inspection. Donee shall, and does hereby agree, to the extent permitted by law, to indemnify and defend Donor against, and hold Donor harmless from, all claims, damages, expenses, and actions arising from any negligence or wrongful misconduct of Donee or Donee's employees or agents, as a result of such Inspection.

4.2. Reports. Within ten (10) days after the Effective Date, Donor shall provide

copies to Donee of use agreements regarding the Property; service, management and other agreements regarding the Property whose terms do not expire prior to the date of the Closing; permits, certificates, plans or specifications regarding the Property; soils reports, property inspections, hazardous/toxic material or environmental reports regarding the Property; surveys of the Property; and registrations, test results and studies regarding any wells located on the Property (all of which shall hereinafter be referred to as the "**Donor Documents**"). If this Agreement is terminated for any reason, all of Donor's Documents and any copies made by Donee of Donor's Documents shall be returned to Donor. During the term of this Agreement, Donee shall deliver to Donor copies of all non-proprietary third party reports, studies, surveys, plats, engineering data or work product or other work product pertaining to the Property as the same are prepared. If Donee terminates this Agreement for any reason, all such third party reports, studies, surveys, plats or other work product shall be returned to Donee. The delivery by Donor or Donee to the other Party of any such third party reports, studies, surveys, plats, engineering data or work product or other work product shall be without any representation or warranty.

4.3. Environmental Inspection. If an environmental inspection recommends further testing or inspection, Donee may elect, by giving written notice to Donor, to extend the Inspection Period for an additional forty-five (45) days, to conduct further investigations. If the Inspection Period is extended, the term "**Inspection Period**" shall then include the additional period.

4.4. Objection Notice. Donee shall provide written notice to Donor, prior to expiration of the Inspection Period, of any items disapproved by Donee as a result of Donee's inspections (including environmental conditions) (the "**Objection Notice**"). If Donee sends an Objection Notice, Donor may, within ten (10) business days of receipt of the Objection Notice, notify Donee if Donor is willing to cure any of the items to which Donee objected (the "**Cure Notice**"). If Donor elects not to send Donee a Cure Notice or if Donor's Cure Notice is not acceptable to Donee, then Donee may elect to terminate this Agreement in which case the Agreement shall be terminated and of no further force and effect. If Donee fails to give the Objection Notice to Donor on or before the expiration of the Inspection Period, Donee shall be deemed to have waived the right to give the Objection Notice.

4.5. Closing Before Inspection Period Expires. Nothing in this Agreement shall preclude Donee from electing to proceed with Closing prior to the expiration of the Inspection Period.

5. Donor's Covenants.

5.1. No Salvage. Donor shall not salvage or remove any fixtures, improvements, or vegetation from the Property, but this shall not prohibit Donor from removing personal property prior to the Closing. In addition, prior to Closing, the Property shall not be materially degraded by Donor or otherwise changed in any material aspect by Donor.

5.2. Use of Property by Donor. Donor shall, during the term of this Agreement, use the Property on a basis substantially comparable to Donor's historical use thereof. Donor shall make no use of the Property other than the use being made of the Property as of the date this Agreement is signed by the Parties. Donor shall maintain the Property in substantially the same condition as it is presently in, ordinary wear and tear excepted, and without liens or encumbrances that Donor will be able to cause to be released before the Closing.

5.3. No Encumbrances. Donor shall not encumber the Property with any lien that Donor will be unable to cause to be released before Closing. Donor covenants and agrees that from and after that Agreement Date through the Closing, Donor shall not enter into, execute or record any covenant, deed restriction, or any other encumbrance against the Property.

4. **No Personal Property.** The Parties acknowledge that no personal property is being transferred pursuant to this Agreement, and Donor represent that there is now, or as of Closing will be, no personal property located on Property.

5. Closing.

5.1. Closing. The Closing shall take place after completion of the Inspection Period, but no later than 180 days after the Effective Date, unless otherwise agreed to by the Parties.

5.2. Prorations. The date of closing shall be used for proration of rents, property taxes and other similar costs; assessments due for improvement districts shall be paid in full by the Donor prior to closing; and property taxes shall be prorated based upon the date of closing.

5.3. Deliveries by Donor at Closing. At Closing, Donor shall deliver to Donee the following:

5.3.1. an executed Special Warranty Deed ("**Deed**") in the form of **Exhibit C** attached, conveying fee simple title to the Property subject only to the Permitted Exceptions;

5.3.2. one or more assignments of all the water rights and well registrations, certificated or claimed, in which Donor has an interest and appurtenant to the Property, if any, and all certificated or claimed Type 2 water rights, if any; and

5.3.3. possession of the Property.

5.4. Closing Costs. Donee shall pay all closing costs, including but not limited to title insurance premium, escrow fees and recording fees. Those costs are expected to be as follows:

\$ <u> 0.00</u>	Acquisition Amount
\$ <u> 2,700.00</u>	Estimated County Closing Costs
\$ <u> 2,700.00</u>	TOTAL NOT TO EXCEED AMOUNT

6. **Binding Agreement.** All provisions set forth herein are binding upon the heirs, successors and assigns of the Parties.

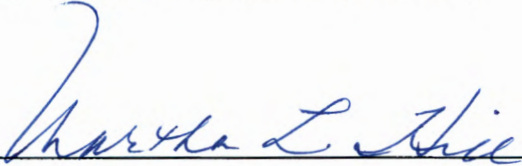
7. **Governing Law.** This Agreement shall be construed under the laws of the State of Arizona.

8. **Conflict of Interest.** This Agreement is subject to cancellation within three (3) years after its execution pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the County is, at any time while this Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement with respect to the subject matter of the Agreement.

The Parties have signed this Agreement on the dates set forth below.

Donor:

FIDELITY NATIONAL TITLE AGENCY, INC., an Arizona corporation, as Trustee under Trust No. 10,808, and not in its corporate capacity and not personally

By: 

As: Trust Officer

Date: 11.2.16

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Regional Flood Control District, a taxing authority of the State of Arizona

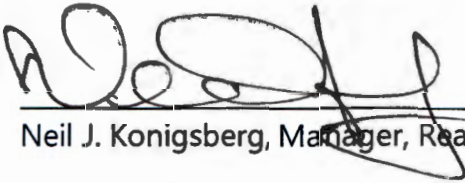
Chair, Board of Directors of the Pima County Flood
Control District

Date

ATTEST:

Robin Brigode, Clerk of Board of Directors of the Pima
County Flood Control District

Date



Neil J. Konigsberg, Manager, Real Property Services

APPROVED AS TO FORM:



Tobin Rosen, Deputy County Attorney, Civil Division

11/15/16

Date

TAX PARCEL NUMBER: 305-01-002A

EXHIBIT "A"
LEGAL DESCRIPTION

The North half of the North half of Section 18, Township 16 South, Range 15 East, Gila and Salt River Base and Meridian, Pima County, Arizona.

EXCEPT that portion lying within Wilmot Road South as Shown on Map recorded in the office of the County Recorder of Pima County, Arizona, in Book 8 of Maps, page 42 under Proceedings No. 955, recorded in Docket 1221, page 13.

FURTHER EXCEPT the following described Parcel:

A portion of Government Lot 1 of Section 18, Township 16 South, Range 15 East, Gila and Salt River Meridian, Pima County, Arizona, described as follows:

COMMENCING at the Northwest corner of said Section 18;

THENCE South 00 degrees 26 minutes 38 seconds West 561.13 feet upon the West line of said Lot 1;

THENCE South 89 degrees 33 minutes 22 seconds East 150.00 feet to the Easterly right-of-way line of Wilmont Road, being a 1/2" rebar with 2" aluminum cap stamped "PLS 21765", also being the POINT OF BEGINNING;

THENCE continue South 89 degrees 33 minutes 22 seconds East 511.23 feet to a 1/2" rebar with 2" aluminum cap stamped "PLS 21765";

TEHNCE South 00 degrees 26 minutes 38 seconds West 757.94 feet to the South line of said Lot 1, to a 1/2" rebar with 2" aluminum cap stamped "PLS 21765";

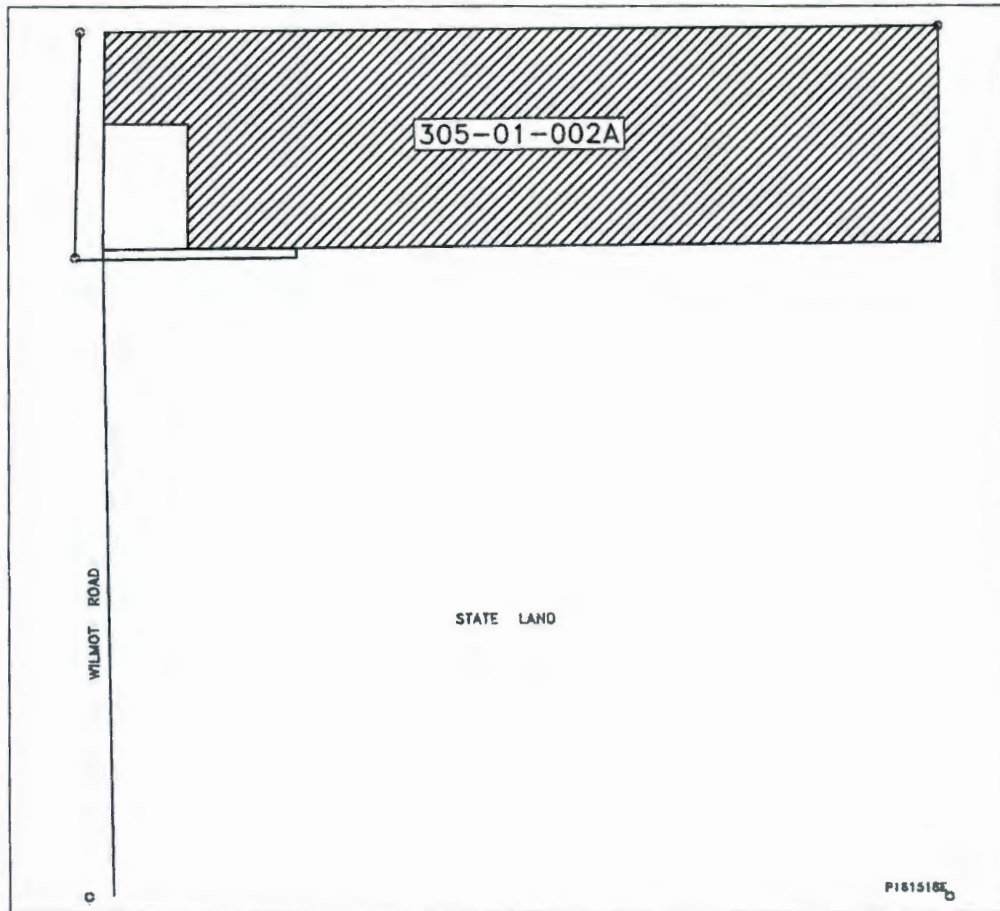
THENCE Norht 89 degrees 33 minutes 22 seconds West 511.23 feet upon said South line, to a 1/2" rebar with 2" aluminum cap stamped "PLS 21765";

THENCE Norht 00 degrees 26 minutes 38 seconds East 760.58 feet to the POINT OF BEGINNING.

(jv arb: 4)

EXHIBIT "A-1"

SECTION 18
TOWNSHIP 16 SOUTH
RANGE 15 EAST



PIMA COUNTY DEPARTMENT OF TRANSPORTATION
ENGINEERING INFORMATION MANAGEMENT SECTION

SCALE: NTS

DRAWN BY: ABARBAREE

DATE: AUGUST 18, 2016

EXHIBIT B
COMMITMENT FOR TITLE INSURANCE
SCHEDULE B

File No.: 05504-22058

Showing matters which will be excepted in the Policy unless the same are disposed of to the satisfaction of the Company.

- i. Defects, liens, encumbrances, adverse claims or other matters, if any, created first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
- ii. Subject to the usual printed exclusions and exceptions contained in the regular form of policy, reprinted for reference on the Addendum attached hereto.

The following matters will be excepted in Schedule B of the policy to be issued:

1. Taxes and assessments collectible by the County Treasurer, not yet due and payable for the year 2016 .
2. Any action by the County Assessor and/or Treasurer, altering the current or prior tax assessment, subsequent to the date of the Policy of Title Insurance.
3. Water rights, claims or title to water, and agreements, covenants, conditions or rights incident thereto, whether or not shown by the public records.
4. Reservations or exceptions in Patent from the United States of America, recorded in Book 84 of Deeds, page 199.
5. Any easements or rights of way not disclosed by those public records which impart constructive notice and which are not visible and apparent from an inspection of the surface of said land.
6. Easement for electric transmission facilities and rights incident thereto, as set forth in instrument recorded in Docket 249, page 26.
7. Easement for electric transmission lines and rights incident thereto, as set forth in instrument recorded in Docket 767, page 281.
8. Matters as disclosed by surveys recorded in Book 14 of Record of Surveys, page 25 and in Book 77 of Record of Surveys, page 36.
9. Provisions within Resolution No. 2011-31, Relating to Planning, Amending the Pima County Comprehensive Plan Land Use Map, recorded in Sequence No. 2011-0490644.
10. Rights of lessees and/or parties in possession.
11. Any claim or loss by reason of not recording an Affidavit of Affixture relating to any mobile home located on said land.
12. Any unpaid personal property taxes which may become a lien on real proerty by reason of mobile home located thereon.

EXHIBIT "C"

SPECIAL WARRANTY DEED

For valuable consideration, I or we, _____ ("Grantors"), do hereby convey to Pima County Flood Control District, a political taxing subdivision of the State of Arizona the following described property situate in Pima County, Arizona:

SEE ATTACHED **EXHIBIT "A"** FOR LEGAL DESCRIPTION AND ATTACHED **EXHIBIT "A-1"** FOR DEPICTION

SUBJECT TO all matters of record.

And the Grantor hereby binds itself and its successors to warrant the title against all acts of the Grantor herein and no other, subject only to matters above set forth.

Dated this _____ day of _____, 2016.

By: _____

Title: _____

STATE OF ARIZONA

COUNTY OF PIMA

) ss

)

This instrument was acknowledged before me this _____ day of _____, 2016, by _____ as _____ of _____.

Notary Public

My Commission Expires: _____

EXEMPTION: A.R.S. §11-1134.A.3.		Board of Supervisors:	Right of Way [] Parcel []
Agent:	File #:	Activity #:	P [] De [] Do [] E []