



BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: July 25, 2023

* = Mandatory, information must be provided

or Procurement Director Award: ☐

***Contractor/Vendor Name/Grantor (DBA):**

Silver Creek Association, an Arizona non-profit corporation

***Project Title/Description:**

Agreement to Donate Real Property

***Purpose:**

Pima County Flood Control District (the "District") is acquiring property via Donation Agreement from the Silver Creek Association as a part of a rainwater harvesting and revegetation project referred to as the Meander Bend Park. The revegetation project will improve a portion of the erosion meander created by the Santa Cruz River that has now been filled by the District with sediment excavated during the completed Santa Cruz River capacity restoration efforts. Acceptance of the donation secures a large portion of the project area for long term management by the District. (RPS File No: Acq-0753)

***Procurement Method:**

Exempt pursuant to Pima County Code 11.04.020

***Program Goals/Predicted Outcomes:**

The District will acquire property under the Meander Bend Project.

***Public Benefit:**

Floodprone land will be acquired by the Pima County Flood Control District and revegetated and improved with walking trails preventing private development of the property and increasing public open space and recreational opportunities.

***Metrics Available to Measure Performance:**

The District will acquire 3.703 Acres of vacant land via Donation Agreement, with a maximum closing cost of \$3,000.00 (which will be paid through a PR) at Escrow.

***Retroactive:**

No.

Location Map Attached

TO: COB 7-12-23 (4)
VER: 1
PGS: 15

JUL 10 2023 PM 10:50 PD

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: CTN

Commencement Date: 7/25/2023

Department Code: RPS

Contract Number (i.e., 15-123): 23*0205

Termination Date: 7/24/2024

Prior Contract Number (Synergen/CMS): _____

☒ Expense Amount \$ 3,000*

☒ Revenue Amount: \$ 0.00

***Funding Source(s) required:** FC Non-Bond Projects Fund

Funding from General Fund? ☐ Yes ☒ No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No

If Yes, is the Contract to a vendor or subrecipient? _____

Were insurance or indemnity clauses modified? ☐ Yes ☒ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

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

Amendment No.: _____ AMS Version No.: _____

Commencement Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

☐ Expense ☐ Revenue ☐ Increase ☐ Decrease

Amount This Amendment: \$ _____

Is there revenue included? ☐ Yes ☐ No If Yes \$ _____

***Funding Source(s) required:** _____

Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards)

☐ Award ☐ Amendment

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

Commencement Date: _____ Termination Date: _____ Amendment Number: _____

☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____

***All Funding Source(s) required:** _____

***Match funding from General Fund?** ☐ Yes ☐ No If Yes \$ _____ % _____

***Match funding from other sources?** ☐ Yes ☐ No If Yes \$ _____ % _____

***Funding Source:** _____

***If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?**

Contact: Aaron Mergenthal

Department: Real Property Services

Telephone: 724-6307

Department Director Signature: _____

Date: 6/29/2023

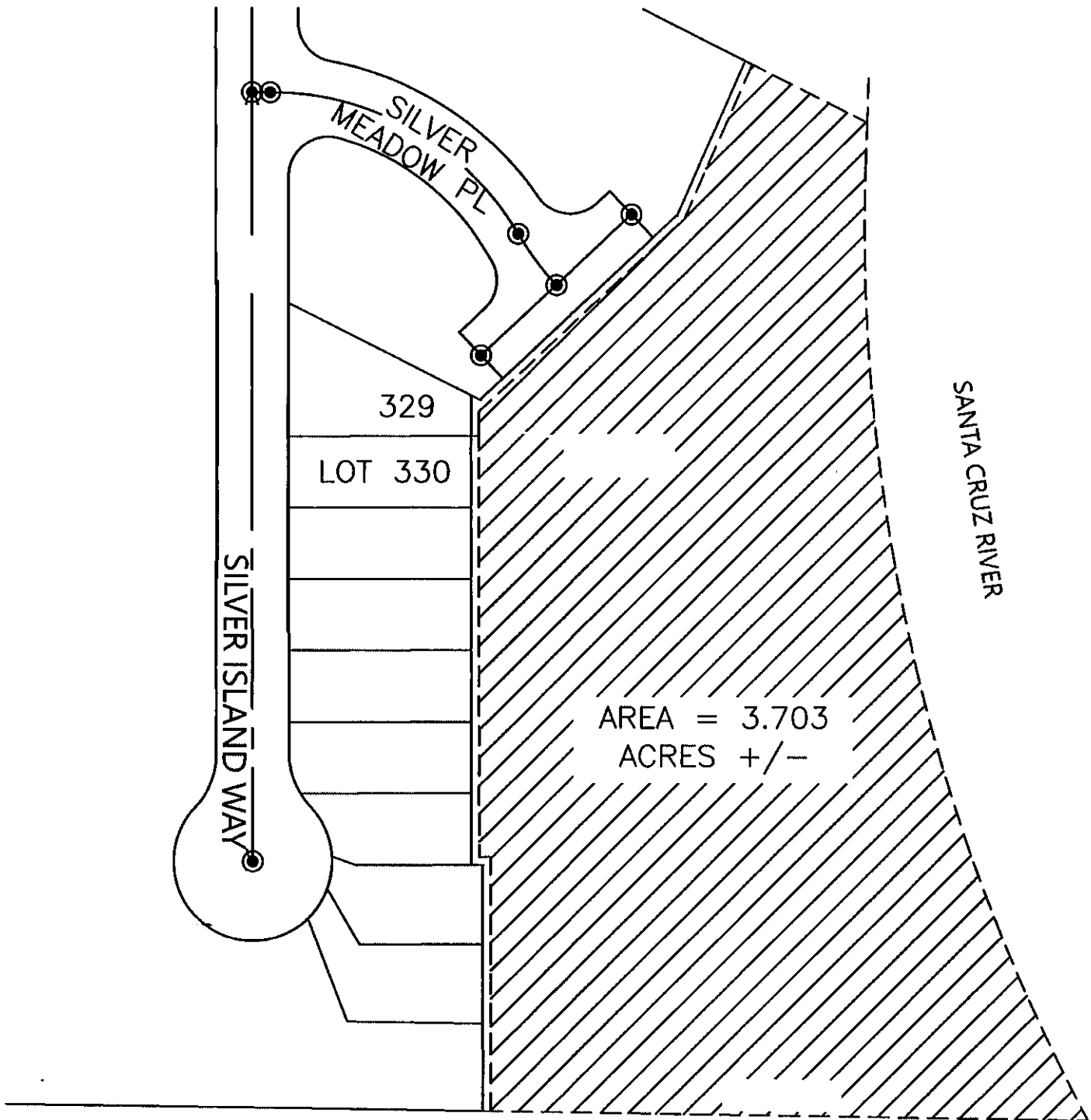
Deputy County Administrator Signature: _____

Date: 7/6/2023

County Administrator Signature: _____

Date: 7/14/2023

LOCATION MAP - MEANDER PARK PROJECT
Silver Creek Common Area Dedication; Acq-0753



A PORTION OF COMMON AREA "A" PER PLAT OF SILVER CREEK II, BOOK 56, PAGE 82,
LOCATED IN SECTION 34, TOWNSHIP 13 SOUTH, RANGE 13 EAST,
GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA



AGREEMENT TO DONATE REAL PROPERTY

1. **Defined Terms.** The following terms will be used as defined terms in this Acquisition Agreement and have the meaning set forth below ("**Agreement**");

1.1. Donor: Silver Creek Association, an Arizona Non-Profit Corporation

1.2. Donee: Pima County Flood Control District, a political taxing authority of the State of Arizona

1.3. Donee's Maximum Closing Costs: not to exceed Three Thousand Dollars (\$ 3,000.00)

1.4. Title Company: Pioneer Title Agency 7445 North Oracle Road, Ste 101 Tucson, AZ 85704

1.5. Effective Date: the date Donor and Donee have approved and accepted this Agreement by affixing their signatures. The date Donee executes this Agreement is the date this Agreement is signed by the Chair of the Pima County Flood Control District Board of Directors.

1.6. Property: the real property described in **Exhibit A** and depicted in **Exhibit A-1**, together with all improvements thereon and all water rights associated with the Property, if any.

1.7. Removed Exceptions: items #7 on **Exhibit C**

1.8. Donor's Address: 6840 N. Oracle Rd Suite 130, Tucson, Az. 85704

1.9. Donee's Address: Director, Pima County Real Property Services, 201 N Stone Ave, 6th Flr, Tucson, AZ 85701-1207; E-mail: jeffrey.teplitsky@pima.gov

2. **Parties; Effective Date.** This Agreement is entered into between Donor and

Donee, and shall be effective on the Effective Date. Donor and Donee are collectively referred to herein as the "**Parties**," and individually as a "**Party**."

3. **Background & Purpose.**

3.1. Donor is the owner of that certain real property in Pima County, Arizona consisting of approximately 3.703 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**").

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

3.3. Donee desires to construct and maintain, at Donee's sole expense, a natural resource park on the Property, to be known as the Meander Bend Park, as depicted on the tentative conceptual plan on **Exhibit B** attached hereto.

4. **Donation.**

4.1. 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 C** attached hereto.

4.2. 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.

4.3. Having been fully informed of the right to have the property appraised and to receive just compensation based upon the appraisal, Donor acknowledges and agrees that the decision to donate the Property was voluntary and 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.

5. **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.

6. **Closing.**

6.1. 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.

6.2. Prorations. Property taxes, rents, and annual payment of assessments with interest, if any (collectively "**Prorations**") will be prorated as of the date of Closing.

6.3. Larger Parcel. If Donor's entire owned parcel (the "Larger Parcel") is larger than the Property, then the proration of taxes will be for the portion of taxes assessed against Donor's entire parcel that is attributable to the Property. Donor will pay in full the property tax and any unpaid assessments on the Larger Parcel for the calendar year in which the Closing occurs, before becoming delinquent. Donor will Donee harmless from any damages resulting from Donor's failure to pay all such amounts due.

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

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

6.4.2. 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

6.4.3. possession of the Property.

6.5. Closing Costs. Donee shall pay all closing costs, including but not limited to title insurance premium, escrow fees and recording fees. Those costs will not exceed Donee's Maximum Closing Costs.


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

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

9. **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: Silver Creek Association, an Arizona Non-Profit Corporation

By: 
(printed name) Sandra C Mayer

Its PRESIDENT

Date: 5/14/23

Donee's Approval and Acceptance:

Approved and accepted by the Pima County Flood Control District, a political taxing authority of the State of Arizona

Chair, Board of Directors

Date

ATTEST:

Melissa Manriquez, Clerk of the Board of Directors

Date

APPROVED AS TO CONTENT:

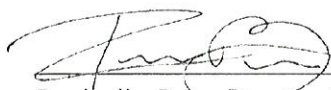
 7/6/2023

Carmine DeBonis, Deputy County Administrator for
Public Works

 6-27-2023
Jeffrey Teplitsky, Director, Real Property Services

 for
Eric Shepp, Director, Pima County Flood Control District

APPROVED AS TO FORM:

 06/26/2023
Rachelle Barr, Deputy County Attorney, Civil Division

TAX PARCEL NUMBER: 103-18-3730

21 February 2018

EXHIBIT "A"
LEGAL DESCRIPTION

All that portion of Common Area "A" of Silver Creek II, Lots 289 through 356, a subdivision plat recorded in Book 56 of Maps and Plats at Page 82 in the office of the Pima County Recorder, being within the Northwest Quarter of Section 34, Township 13 South, Range 13 East, Gila & Salt River Meridian, Pima County, Arizona, more particularly described as follows:

COMMENCING at a 2" BCSM stamped "RLS19833", at the intersection of Silver Island Way and Silver Meadow Place, to which a 2" BCSM stamped "RLS19833" at the south end of Silver Island Way bears South 00°14'07" East a distance of 484.59 feet, the Basis of Bearings for this description as established from the Arizona Coordinate System, NAD 1983 (HARN 92), Central Zone 0202, Pima County, Arizona;

THENCE along the centerline of said Silver Island Way, South 00°14'07" East a distance of 217.09 feet;

THENCE North 89°45'53" East a distance of 23.00 feet to the common corner to Lots 329 and 330 of said Silver Creek II;

THENCE along the common lot line to said Lots 329 and 330 North 89°45'53" East a distance of 115.02 feet to the west property line of said Common Area "A";

THENCE continuing North 89°45'53" East a distance of 5.00 feet to a point on a line 5.00 feet east of and parallel with the westerly boundary line of said Common Area "A" and the **POINT OF BEGINNING**;

THENCE along said parallel line North 00°14'07" West a distance of 15.23 feet;

THENCE continuing along said parallel line North 46°37'27" East a distance of 177.19 feet;

THENCE continuing along said parallel line North 23°34'02" East a distance of 106.56 feet to a point on the south line of 100 foot wide W.A.P.A. Electric Easement per Docket 97 at Page 436 recorded in the office of the Pima County Recorder and as shown on said Silver Creek II plat;

THENCE along the south line of said easement South 63°18'00" East a distance of 81.01 feet to a point on the east line of said Common Area "A";

THENCE along said east line South $01^{\circ}39'52''$ West a distance of 27.10 feet to the beginning of a tangent curve concave to the east having a radius of 1195.14 feet and a central angle of $29^{\circ}58'31''$;

THENCE continuing along said east line and the arc of said curve to the left a distance of 625.26 feet to the south east corner of said Common Area "A", said point being on the south line of said plat;

THENCE along the south line of said Common Area "A", and said plat, North $89^{\circ}12'12''$ West a distance of 376.66 feet to a point on said line 5.00 feet east of a parallel with the west line of said Common Area "A";

THENCE along said parallel line North $00^{\circ}14'07''$ West a distance of 160.20 feet;

THENCE continuing along said parallel line South $89^{\circ}45'53''$ West a distance of 7.00 feet;

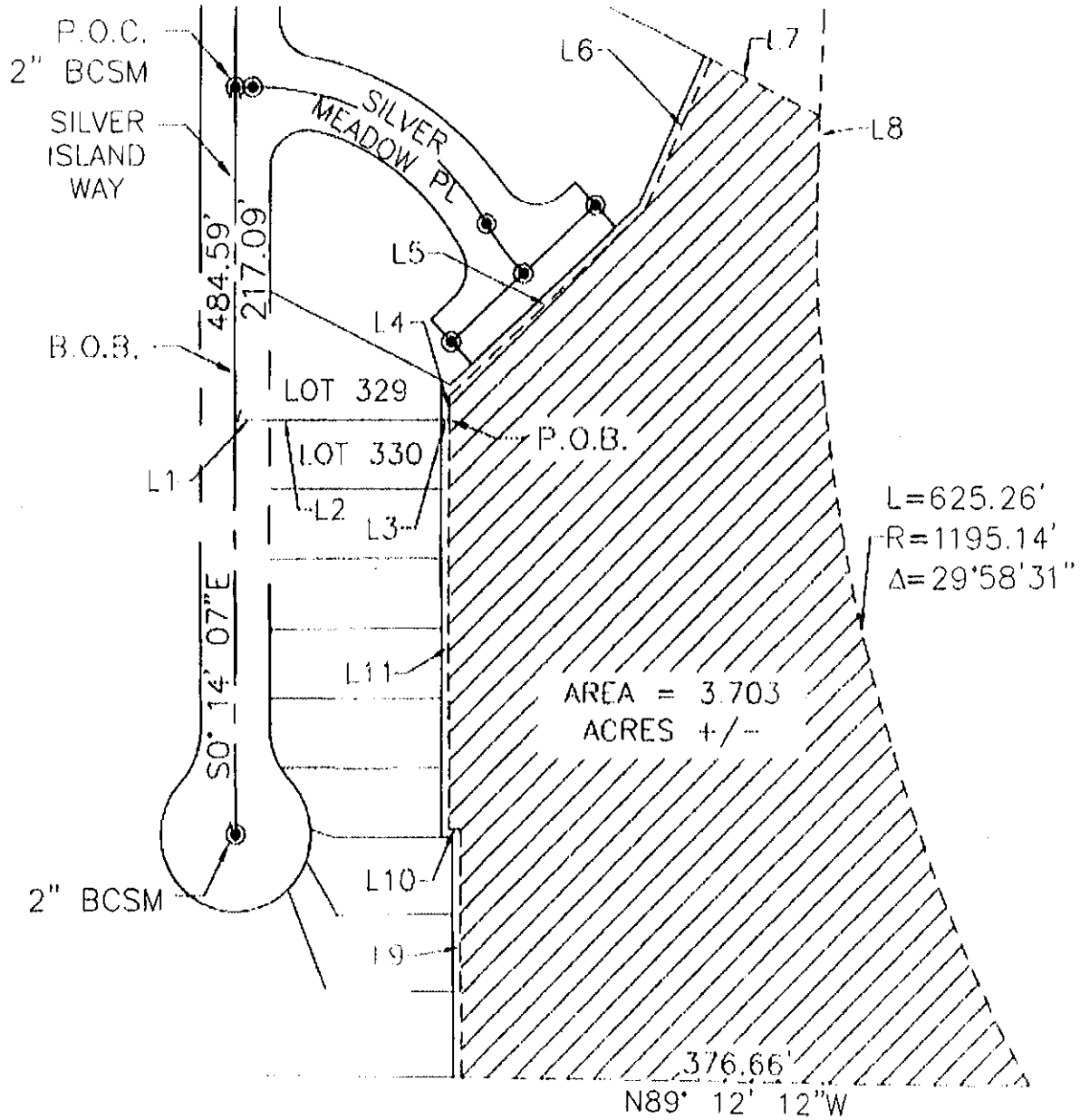
THENCE continuing along said parallel line North $00^{\circ}14'07''$ West a distance of 265.00 feet to the **POINT OF BEGINNING**.



Expires 31 March 2018

EXHIBIT A-1

DEPICTION OF EXHIBIT "A"



PIMA COUNTY SURVEY

A PORTION OF COMMON AREA "A" PER PLAT OF SILVER CREEK II,
BOOK 56, PAGE 82,
LOCATED IN SECTION 34, TOWNSHIP 13 SOUTH, RANGE 13 EAST,
GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

Scale: 1" = 100

Date: 21 February 2018

Drawn By: AJI

Sheet 1 of 2

DEPICTION OF EXHIBIT "A"

Line Table		
Line #	Length	Direction
L1	23.00'	N89° 45' 53"E
L2	115.02'	N89° 45' 53"E
L3	5.00'	N89° 45' 53"E
L4	15.23'	N0° 14' 07"W
L5	177.19'	N46° 37' 27"E
L6	106.56'	N23° 34' 02"E
L7	81.01'	S63° 18' 00"E
L8	27.10'	S1° 39' 52"W
L9	160.20'	N0° 14' 07"W
L10	7.00'	S89° 45' 53"W
L11	265.00'	N0° 14' 07"W



PIMA COUNTY SURVEY

A PORTION OF COMMON AREA "A" PER PLAT OF SILVER CREEK II,
 BOOK 56, PAGE 82,
 LOCATED IN SECTION 34, TOWNSHIP 13 SOUTH, RANGE 13 EAST,
 GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

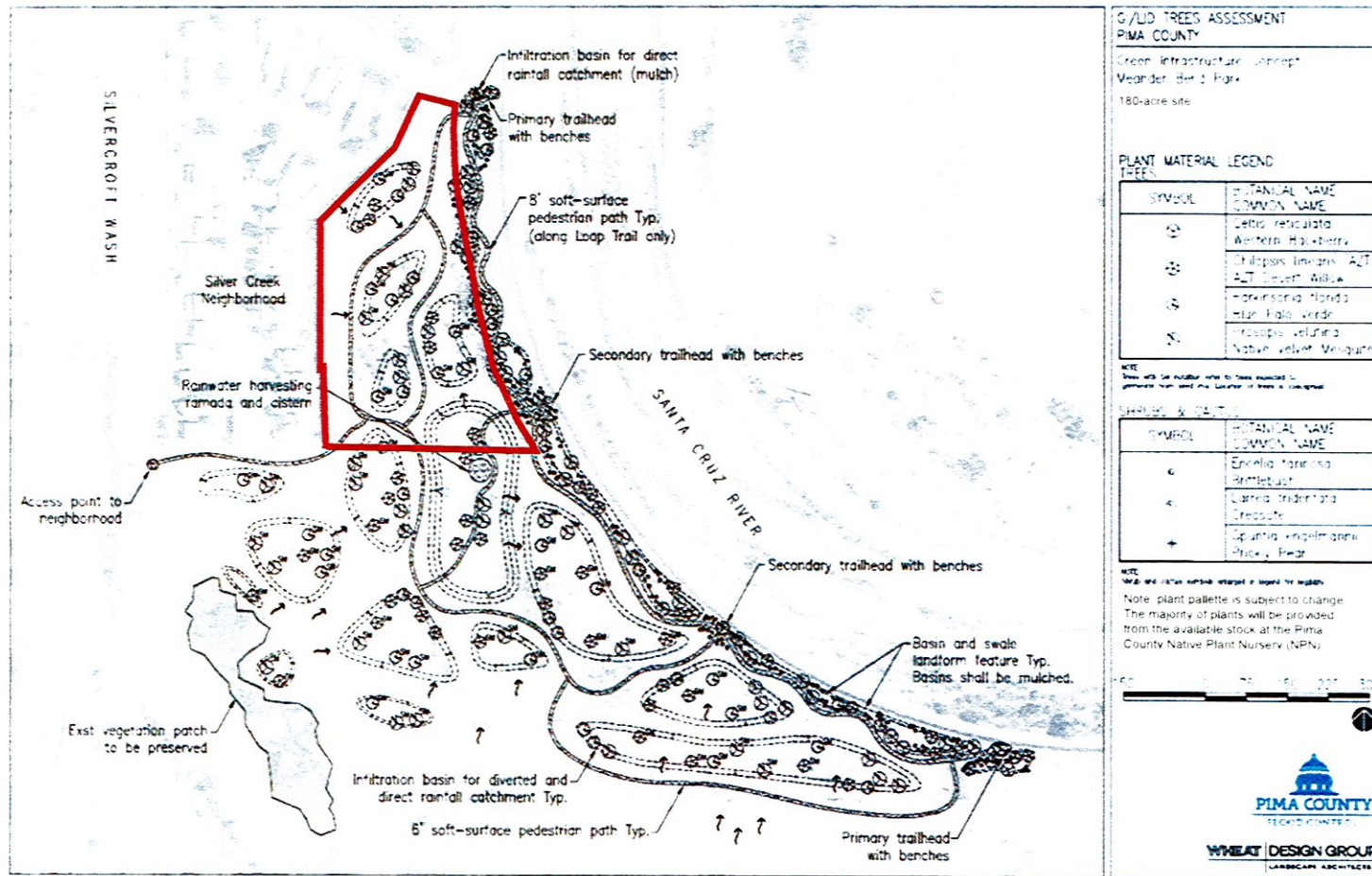
Scale: 1" = 100'

Date: 21 February 2018

Drawn By: AJI

Sheet 2 of 2

EXHIBIT B



Approximate location of Common Area to be Donated

EXHIBIT "C"
Exceptions

Order No. 204311

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.
2. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
3. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
4. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
5. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
6. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
(Note: The above Exceptions Nos. 2 through 6, inclusive, will be eliminated from any A.L.T.A. Extended
7. TAXES for the full year 2020, a lien, not yet due or payable.
8. 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.
9. Reservations or exceptions in Patents or in Acts authorizing the issuance thereof.
10. WATER RIGHTS, claims or title to water, and agreements, covenants, conditions or rights incident thereto, whether or not shown by the public records. This exception is not limited by reason of the disclosure of any matter relating to Water Rights as may be set forth elsewhere in Schedule B.
11. Easements and all other matters shown on the recorded plat(s) of said subdivision.
12. Any adverse claim to any portion of said land which has been created by artificial means or which is accretion, alluvion, dereliction or avulsion.
13. Any adverse claim based upon the assertion that said land, and any portion thereof, is now or at anytime has been included within navigable river, slough or other navigable body of water.
14. Easement(s) to Tucson, Gas, Electric Light and Power Company and rights incident thereto as set forth in Book 92 of Miscellaneous Records at page 50
15. Right of Way and Easement to Southern Pacific Pipe Line, Inc. and rights incident thereto as set forth in Docket 869 at page 270 and in Docket 2266 at page 264

16. Easement(s) to Southwest Gas Corporation and rights incident thereto as set forth in Docket 6368 at page 1036.

17. Easement(s) to City of Tucson, a municipal corporation and rights incident thereto as set forth in Docket 6639 at page 461

18. RESTRICTIONS, CONDITIONS, COVENANTS, EASEMENTS, RESERVATIONS, LIABILITIES AND OBLIGATIONS, including but not limited to any recitals creating easements or party walls contained in instrument recorded in Docket 10583 at page 362 and Notice of Annexation recorded in Docket 11963 at page 2991 and Notice for Silver Creek Association recorded in Docket 12373 at page 2990, omitting, if any, from the above, any restrictions based on race, color, religion, sex, sexual orientation, handicap, familial status, marital status, disability, ancestry, source of income or national origin as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law; Together with all matters pertaining the imposition of any transfer or conveyance fee contained within the document(s). The provisions for such fee require it to be paid upon transfer or conveyance of the land.

19. City of Tucson Ordinance No. 8852 Notice recorded in Docket 11973 at page 2849

20. MATTERS shown on survey recorded in Sequence No. 20190780076

EXHIBIT "D"

Special Warranty Deed

For the consideration of Ten Dollars (\$10.00), and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, _____, the "Grantor" herein, does hereby convey to Pima County Regional Flood Control District, a political taxing authority of the State of Arizona, the "Grantee" herein, the following real property (the "Property") situated in Pima County, Arizona, together with all wells, water rights and mineral rights in which Grantor has an interest and appurtenant thereto:

As described in Exhibit A attached hereto.

Subject to all matters of record.

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

Grantor

Date

STATE OF ARIZONA)

COUNTY OF PIMA)

This instrument was acknowledged before me this _____ day of _____, 20____, by

Notary Public

My Commission Expires:

EXEMPTION: A.R.S. §11-1134.A.3.		Board of Directors:	Right of Way <input type="checkbox"/> Parcel <input checked="" type="checkbox"/>
Agent:	File #:	Program #:	P <input type="checkbox"/> De <input type="checkbox"/> Do <input checked="" type="checkbox"/> E <input type="checkbox"/>