

BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

Requested Board Meeting Date: 02/07/2017

or Procurement Director Award [ ]

Contractor/Vendor Name (DBA): Bear Creek Estates Homeowner's Association

Project Title/Description:

Bear Creek Pump Station Acquisition

Purpose:

Transfer the ownership, maintenance and operation of the Bear Creek pump station from Bear Creek Estates Owner's Association (HOA) to Pima County.

Procurement Method:

Board of Supervisors Policy D29.4 XI. G. Real Property Agreements.

Program Goals/Predicted Outcomes:

The goal of the transfer is to clearly delineate ownership of sanitary pump stations versus private conveyance systems. The predicted outcome is clear ownership of the complete pump system versus portions thereof.

Public Benefit:

County owns the Force Main but not the pump station. This transfer will clearly delineate the ownership of the facility.

Metrics Available to Measure Performance:

More streamlined (less time to complete) maintenance and repair activities as the force main and pump station will be maintained as one County owned unit without the need to coordinate activities between the HOA and County

Retroactive:

No

Original Information

Document Type: CTN Department Code: WW Contract Number (i.e., 15-123): 17-110

Effective Date: 02/07/2017 Termination Date: 02/06/2026 Prior Contract Number (Synergen/CMS):

[ ] Expense Amount: \$ [ ] Revenue Amount: \$ 213,457.00

Funding Source(s):

Cost to Pima County General Fund: N/A

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

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

Vendor is using a Social Security Number? [ ] Yes [x] 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 2-7-17
Vers.: 01 POS.: 16

Vertical stamp: RECEIVED FEB 07 2017

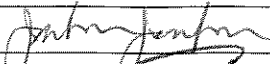
Procure Dept 02/02/17 11:04Z

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Contact: Jaime Rivera

Department: RWRD

Telephone: 4-3436

Department Director Signature/Date:  1/30/17

Deputy County Administrator Signature/Date:  1/30/17

County Administrator Signature/Date:  2/1/17  
(Required for Board Agenda/Addendum Items)

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**PIMA COUNTY REGIONAL WASTEWATER  
RECLAMATION DEPARTMENT**

**PROJECT: Bear Creek Pump Station Acquisition**

**OWNER: Bear Creek Estates Homeowner's Association**

**AMOUNT (Revenue): \$213,457.00**

**FUNDING: RWRD Obligations**

<b>CONTRACT</b>	
NO.	<u>CTN-WW-17-110</u>
AMENDMENT NO.	_____
This number must appear on all invoices, correspondence and documents pertaining to this contract.	

(STAMP HERE)

**FACILITY ACQUISITION, EASEMENT, AND OPERATION AGREEMENT**

This Agreement entered between Pima County, a body politic and corporate of the State of Arizona, hereinafter called "County"; and the Bear Creek Estates Homeowner's Association, an Arizona non-profit corporation, hereinafter called "HOA." County and Owner, collectively, are the "Parties."

**WITNESSETH**

WHEREAS, HOA owns and operates a pump station (the "Facility") more fully described in Exhibit A hereto that is located on real property (the "Property") described in Exhibit B hereto; and

WHEREAS, HOA has determined that it: (1) no longer desires to own and operate the Facility; (2) intends to fund certain identified upgrades to the Facility; and (3) will transfer ownership of the Facility to County in exchange for County's agreement to accept and operate the Facility; and

WHEREAS, County is willing to accept ownership of the Facility and to operate it as part of the public sewer system provided HOA funds the identified upgrades.

NOW, THEREFORE, the Parties hereto agree as follows:

**ARTICLE 1 – EFFECTIVE DATE AND TRANSFER DATE**

This Agreement is effective on the date County and HOA have both executed this Agreement (the "Effective Date"). The date ownership and responsibility for the Facility is transferred to County ("Closing Date" or "Closing") will be a date mutually agreed to by the Parties provided, however, that the Closing Date will be no more than thirty (30) days following the Effective Date.

**ARTICLE 2 – CONVEYANCE**

In consideration for County's agreement to: (1) accept ownership of the Facility; (2) operate the Facility as part of the public sewer system; and (3) construct the upgrades identified in Exhibit C hereto (the "Upgrades"), HOA hereby conveys title to the Facility to County and agrees to fund the Upgrades. HOA's liability for Upgrade costs is capped at \$213,457.00 (the "Cost"), as calculated below.

### **ARTICLE 3 – FUNDING OF UPGRADES**

County inspected the mechanical condition of the Facility and determined that certain repairs (the Upgrade) must be made to bring the Facility into compliance with County standards. Subsequent to the mechanical inspection, County sought and received a cost estimate in the amount of \$194,052.00 for the Upgrade, as shown in Exhibit C. With a 10% contingency to cover unknowns and variance within the Exhibit C estimate, the total estimated amount to complete the Upgrade is \$213,457.00.

Exhibit C identifies two phases of Upgrade: "Current"; and "1-5 Year." Work for the two phases is estimated to cost \$100,837.00 and \$93,215.00, respectively. To cover the Upgrade costs, HOA agrees to, prior to the Closing Date, make an initial payment of \$23,000.00 into an Escrow to partially cover the "Current" costs. HOA further agrees to compensate County for the remainder of the Cost by making payments pursuant to the schedule attached hereto as Exhibit D.

### **ARTICLE 4 – ACCOUNTING TO HOA AND ADJUSTMENT OF FUNDING**

Following completion of the Upgrade, County will provide HOA with a final accounting of costs incurred by County in completing the Upgrade. Such accounting will include copies of all invoices received from County contractors for the Upgrade. In the event the final accounting indicates that the total cost of completing the Upgrade is less than HOA's liability cap of \$213,457.00, County will, as appropriate, refund any overpayment made by HOA, reduce future payments due under this Agreement to eliminate future overpayment, or a combination of the two adjustments. For purposes of this section, overpayment is defined as the difference between HOA's liability cap of \$213,457.00 and the actual cost of the Upgrade if the actual cost is less.

### **ARTICLE 5 - REPRESENTATIONS AND WARRANTIES**

HOA hereby makes the following representations and warranties to and for the benefit of County. Each representation and warranty contained herein is true and correct, and shall be true and correct as of the date of Closing, unless HOA notifies County in writing prior to Closing of any change in facts or circumstances which shall cause any of the following warranties and representations to be untrue, misleading or misrepresenting as to the facts and circumstances described therein.

(a) To HOA's actual knowledge, except as may be disclosed by any report relating to the environmental condition of the Facility and the Property, the Facility and the Property do not contain any and are free from all underground storage tanks, hazardous, toxic or contaminated waste materials, pollutants and contaminants, including, but not limited to, petroleum and asbestos ("Hazard Substances") and are not the subject of any action by any environmental protection agency, department of natural resources or governmental agency or entity with similar powers and duties, rules, regulations, restrictions, orders or other environmental regulations of the State of Arizona, the United States, or any other governmental authority or subdivision thereof having jurisdiction. If HOA becomes aware of any Hazardous Substance within the Facility or the Property, or any claim or notice thereof, between the Effective Date and Closing, HOA shall immediately notify County in writing.

(b) Except as otherwise disclosed by HOA, there are no claims, causes of action or other litigation or proceedings pending or, to the best of HOA's knowledge, threatened in respect to zoning, ownership, operation, or other condition of the Facility, the Property, or any part thereof.

HOA's representations contained in this Agreement will survive Close of Escrow, conveyance of the Facility to County, and the delivery and recordation of HOA's deed.

### **ARTICLE 6 –RIGHT OF ENTRY AND FACILITY APPEARANCE PRESERVATION**

HOA grants to County an indefinite easement to own, operate, maintain, expand, and replace a sewage pump station and appurtenant sewer facilities (including manholes) within the bounds of the Property. HOA agrees to design, install, and maintain the Property vegetation. HOA agrees that vegetation types

and locations will not encroach upon buried utilities within the Property nor will they impede County operation or maintenance of the Facility. HOA further agrees that County may, without compensation to HOA or any obligation to replace, remove vegetation on the Property if necessary for repair or replacement of the pump station. County further agrees as follows:

- a. County will make all reasonable efforts to preserve the esthetics and appearance of the real property as it is at the time of closing.
- b. Except as provided elsewhere in this Article, County will preserve the appearance, paint colors, and artwork existing at the Facility. If County has to move or change the walls surrounding the equipment, it will make reasonable efforts to remove and preserve all artwork on the walls and restore it after such movement or change is completed.
- c. Except as provided elsewhere in this Article, County will not remove, change, or damage vegetation except as necessary for maintenance of the pump station and appurtenant sewer facilities.
- d. County will allow HOA to access the County's water line for the purpose of maintaining desert vegetation landscaping around the lift station.
- e. County will allow HOA to access the station for maintenance of area landscape lighting, and agrees to allow the landscape lighting controller to be connected into a 110V outlet in or near the Facility.
- f. County desires to make modifications to the existing pump station walls in size and height. HOA has the right to review and request reasonable changes to the final plans prior to any changes being implemented.
- g. County desires to re-configure the landscaping wall, steps, and access area on the west side of the Property to improve access for County equipment. HOA has the right to review and request reasonable changes to the final plans prior to any changes being implemented.

#### **ARTICLE 7 – HOA's COVENANTS**

- a. **No Personal Property.** No personal property is being transferred pursuant to this Agreement. HOA represents that as of the Closing Date there will be no personal property located within the Facility.
- b. **No Salvage.** HOA shall not salvage or remove any fixtures or improvements from the Facility, but this does not prohibit HOA from removing personal property prior to the Closing. In addition, prior to Closing, the Facility will not be materially degraded or otherwise materially changed in any aspect by HOA.
- c. **Risk of Loss for Damage to Improvements.** HOA bears the risk of loss or damage to the Facility prior to Closing. After Closing, the risk of loss or damage to the Facility rests with County.
- d. **Government Approvals.** HOA will obtain all government approvals required to close the sale of the Property, if any.
- e. **Use of Property by HOA.** HOA will, prior to the Closing, use the Property on a basis substantially comparable to HOA's historical use thereof. HOA 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 HOA will be able to cause to be released before the Closing.
- f. **No Encumbrances.** HOA shall not encumber the Property with any lien that HOA will be unable to cause to be released before Closing, and HOA shall not be entitled to sell or exchange all or any portion of the Property before Closing without the prior written approval of County; provided, however, that any such sale will be conditioned upon a written assumption by County thereof of the obligations of HOA under this Agreement, and there will be no novation of HOA with respect to its obligations under this Agreement. From and after the Effective Date through the Closing, HOA will not enter into, execute, or record any covenant, deed restriction, or any other encumbrance against the Property. The recording of any such covenant, deed restriction, or other encumbrance, is a material breach of this Agreement and entitles County to terminate this Agreement.
- g. **Reports.** HOA shall make available to County all documents relating to the Property that it has in its possession regarding the Property, including any and all surveys, information regarding wells and water rights, and environmental reports.

## **ARTICLE 8 - ENVIRONMENTAL**

- a. Environmental Representations. County and HOA agree that neither party is assuming any obligation of the other party relating to any potential liability, if any, arising from the environmental condition of the Facility, each party remaining responsible for its obligations as set forth by law.
- b. Environmental Inspection Rights.

1. From and after the Effective Date, HOA shall permit County to conduct such inspections of the Facility and Property as the County deems necessary to determine the environmental condition of the Facility and Property. If any environmental inspection recommends further testing or inspection, the Parties hereby agree to extend the date of Closing to at least thirty (30) days after the report for such additional testing or inspection is completed on behalf of County, but not later than an additional one hundred eighty (180) day extension.

2. If any environmental inspection reveals the presence of contamination or the need to conduct an environmental cleanup, County shall provide written notice to HOA, prior to Closing, of any items disapproved by County as a result of County's inspection (the "Objection Notice"). If County sends an Objection Notice, HOA may, within fifteen (15) business days of receipt of the Objection Notice, notify County if HOA is willing to cure any of the items to which County objected (the "Cure Notice"). If HOA elects not to send County a Cure Notice or if HOA's Cure Notice is not acceptable to County, then County may elect to terminate this Agreement, in which case the Agreement will be terminated and of no further force and effect.

## **ARTICLE 9 - REMEDIES**

Default, Remedies, and Conditions Precedent. In the event either Party defaults under this Agreement, the other Party shall be entitled to pursue all rights and remedies available at law or in equity, including specific performance. To the extent a Party seeks damages, the recovery is limited to actual damages (including any losses or penalties suffered by County as a result of any violation of federal arbitration violations caused by a wrongful failure of HOA to perform). Neither Party is entitled to exemplary, punitive, special, indirect or consequential damages.

## **ARTICLE 10 - INDEMNIFICATION**

HOA will indemnify, defend, and hold harmless County, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by HOA, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of this Agreement.

## **ARTICLE 11 - COMPLIANCE WITH LAWS**

HOA warrants that operation of the Facility is and has been in full compliance with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation. The laws and regulations of the State of Arizona govern the rights, performance and disputes of and between the parties. Any action relating to this Agreement must be brought in a court of the State of Arizona in Pima County.

Any changes in the governing laws, rules, and regulations during the Agreement apply, but do not require an amendment or revisions.

## **ARTICLE 12 - AUTHORITY TO CONTRACT**

HOA warrants its right and power to enter into this Agreement. If any court or administrative agency determines that County does not have authority to enter into this Agreement, County will not be liable to HOA or any third party by reason of such determination or by reason of this Agreement.

**ARTICLE 13 - CLOSING**

At Closing, HOA will deliver to County an executed Special Warranty Deed ("Deed") including the forms of Exhibit C and Exhibit D as attachments, conveying fee simple title to the Facility and an easement for the Property, respectively, subject only to the Permitted Exceptions.

**ARTICLE 14 - FULL AND COMPLETE PERFORMANCE**

The failure of either party to insist on one or more instances upon the full and complete performance of any of the terms or conditions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, is not a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.

**ARTICLE 15 - CANCELLATION FOR CONFLICT OF INTEREST**

This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.

**ARTICLE 16 - TERMINATION**

County reserves the right to terminate this Agreement without cause at any time prior to Closing by serving upon HOA with written notice of such intent to terminate. If County so terminates this Agreement prior to closing, its sole obligations are to: (1) release to HOA any payments made to escrow pursuant to this Agreement; and (2) reimburse HOA for reasonable costs it incurred prior to the date of termination in preparing for the transfer.

This Agreement may be terminated at any time without advance notice and without further obligation to County when HOA is found by County to be in default of any provision of this Agreement.

**ARTICLE 17 - NOTICE**

Any notice required or permitted to be given under this Agreement will be in writing and will be served by personal delivery or by certified mail upon the other party as follows:

COUNTY:

Director  
Regional Wastewater Reclamation Department  
201 N. Stone, 8<sup>th</sup> Floor  
Tucson AZ 85701

HOA:

Treasurer  
Bear Creek Estates Homeowner's Association  
8881 East Honeybear Place  
Tucson AZ 85749

**ARTICLE 18 - SEVERABILITY**

Each provision of this Agreement stands alone, and any provision of this Agreement found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

**ARTICLE 19 - ENTIRE AGREEMENT**

This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Agreement may be modified, amended, altered or extended only by a written amendment signed by the parties.

IN WITNESS WHEREOF, the parties have affixed their signatures to this HOA on the date written below.

**PIMA COUNTY**

**HOA**

\_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
Authorized Officer Signature

*David McKeethon*  
\_\_\_\_\_  
BLE HOA Board President  
Printed Name and Title

\_\_\_\_\_  
Date

ATTEST

\_\_\_\_\_  
Clerk of Board

\_\_\_\_\_  
Date

APPROVED AS TO FORM

*[Signature]*  
\_\_\_\_\_  
Deputy County Attorney

**CHARLES WESSELHOFT**

\_\_\_\_\_  
Print DCA Name

**JAN 17 2017**

\_\_\_\_\_  
Date

APPROVED AS TO CONTENT

*[Signature]*  
\_\_\_\_\_  
RWRD Director

*N/A*  
\_\_\_\_\_  
Real Property Manager



# Exhibit A



# Exhibit B

06 January 2017

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

All that portion of Lot 15 of Bear Creek Estates, a subdivision plat recorded in Book 46 of Maps and Plats at Page 22, recorded in the office of the Pima County Recorder, Arizona, being located in the Northwest quarter of the Northwest Quarter of Section 34, Township 13 South, Range 15 East, Gila & Salt River Meridian, Pima County, Arizona, more particularly described as follows:

**COMMENCING** at the southeast corner of said Lot 15, a ½" rebar tagged RLS26058:

**THENCE** along the east line of said Lot 15 North 51°50'28" East a distance of 199.75 feet to a ½" rebar tagged RLS26058;

**THENCE** continuing along the east line of said Lot 15 North 06°14'54" East a distance of 186.82 feet to a point on the centerline of an existing easement;

**THENCE** along said centerline North 83°43'33" West a distance of 86.66 feet to the **POINT OF BEGINNING**;

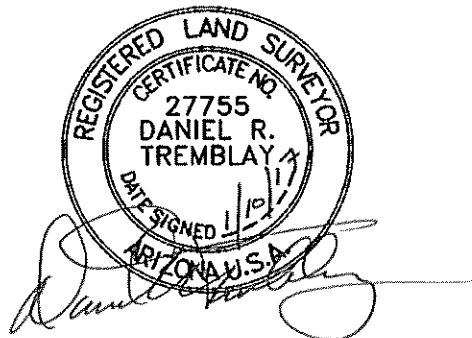
**THENCE** South 02°13'37" West a distance of 6.03 feet;

**THENCE** North 87°46'23" West a distance of 10.00 feet;

**THENCE** North 02°13'37" East a distance of 13.00 feet;

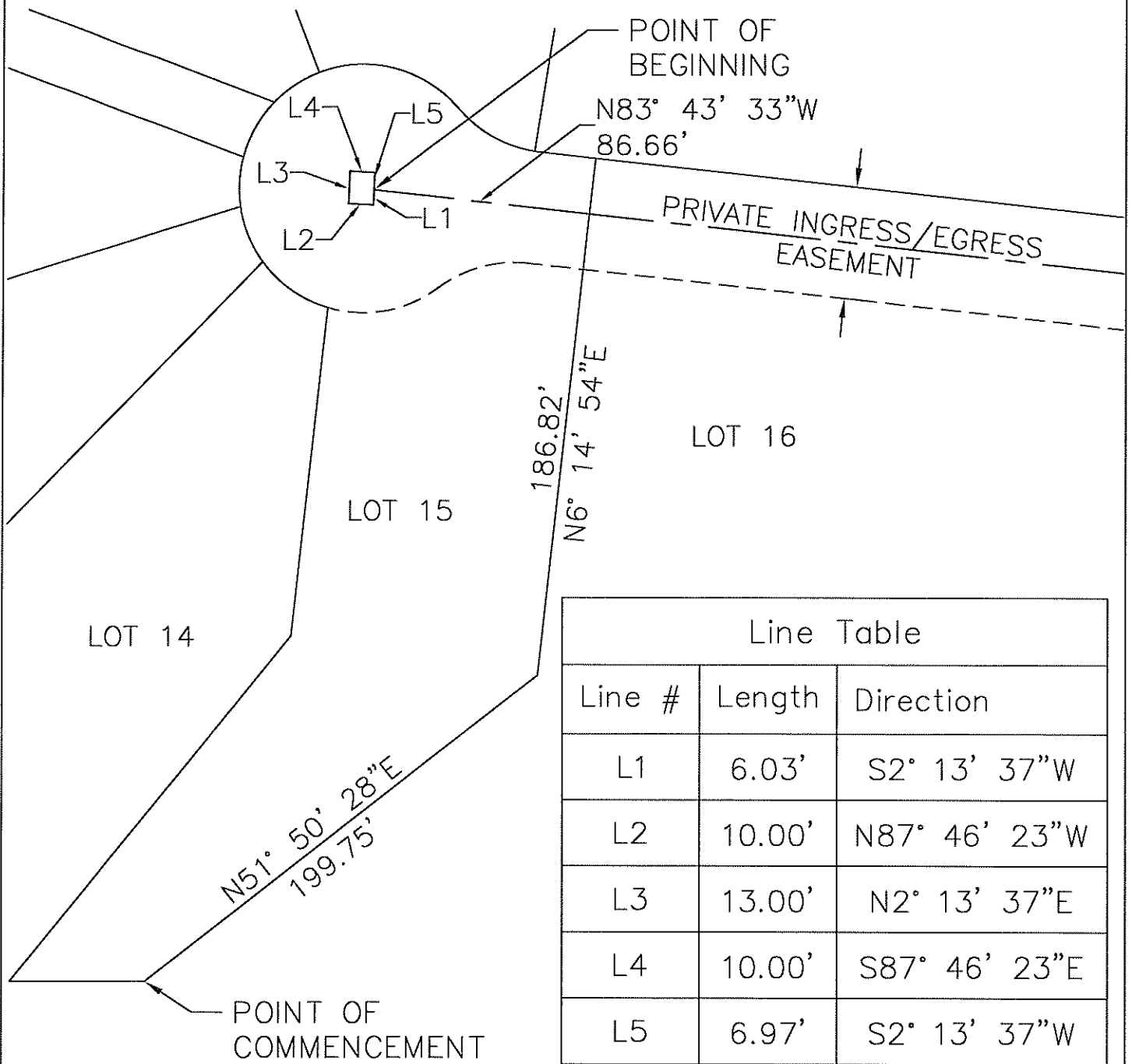
**THENCE** South 87°46'23" East a distance of 10.00 feet;

**THENCE** South 02°13'37" West a distance of 6.97 Feet to the **POINT OF BEGINNING**.

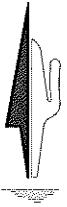


Expires 31 March 2018

# DEPICTION OF EXHIBIT "A"



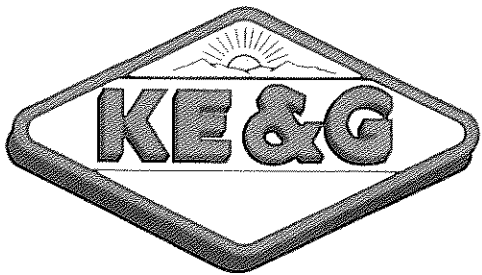
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## PIMA COUNTY SURVEY

A PORTION OF LOT 15, BOOK 46 OF MAPS AND PLATS PAGE 22,  
 LOCATED IN SECTION 34, TOWNSHIP 13 SOUTH, RANGE 15 EAST,  
 GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA.

# Exhibit C



1601 PASEO SAN LUIS, SUITE 202  
 SIERRA VISTA, ARIZONA 85635  
 (520) 458-9594  
 FAX (520) 458-2362

5100 S. ALVERNON WAY  
 TUCSON, ARIZONA 85706  
 (520) 748-0188  
 FAX (520) 748-8975

June 22, 2016

Pima County Regional Wastewater Reclamation Department  
 3355 N Dodge Blvd  
 Tucson, AZ 85716

Attention: David Badger

Re: Bear Creek Estates Pump Station

Dear Mr. Badger,

Pursuant to your request, we have prepared a cost estimate to modify the existing private pump station at Bear Creek Estates.

**Current**

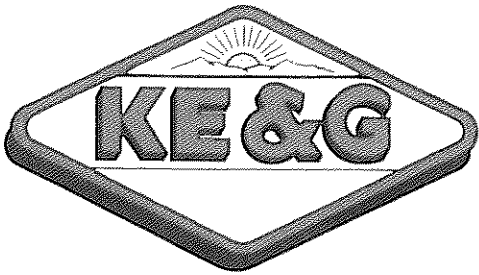
Item Number	Description	Quantity	UM	Unit Bid Price	Total Bid Price
1	Provide Spare Myers WG30H 3HP Pump	1	EACH	\$6,853.55	\$6,853.55
2	Furnish And Install Manhole(s) To Intercept Flow To Wet Well	2	EACH	\$12,936.50	\$25,873.00
3	Modifications To CMU Wall For Access	1	LS	\$7,106.45	\$7,106.45
4	Install A 1.5" Potable Water Service With Backflow Preventer	1	LS	\$22,571.00	\$22,571.00
5	Furnish And Install RTU, PLC Hydro Ranger And SCADA From La Tierra To Bear Creek Pump Station	1	LS	\$26,782.00	\$26,782.00
6	Install SCADA Antenna	1	LS	\$11,651.00	\$11,651.00
				<b>Total Price</b>	<b>\$100,837.00</b>

Included;

- Add two new manholes prior to the wet well over 8" PVC
- Provide New Spare Myers Pump to match existing pumps
- Provide new 1 1/2" water service with hose bib and fire hose connection. Includes Tucson Water Service coordination and fees
- Reconfigure block wall around the station exterior to increase parking area
- Reuse existing electrical equipment from La Tierra pump station and relocate to Bear Creek
- Existing Air system to be removed to provide room for SCADA Panel
- SCADA panel to be installed approx. 6"-12" above wet well cover
- New antenna pole to be located approximately 250' SW of station location

Clarifications;

- New manhole installation to be completed over "live" line and no bypass is included for manhole installation



1601 PASEO SAN LUIS, SUITE 202  
SIERRA VISTA, ARIZONA 85635  
(520) 458-9594  
FAX (520) 458-2362

5100 S. ALVERNON WAY  
TUCSON, ARIZONA 85706  
(520) 748-0188  
FAX (520) 748-8975

- Existing pumps / starters to be re-used
- ADEQ / PDEQ review is excluded
- Stamped As-built drawings are excluded

**1-5 Year**

Item Number	Description	Quantity	UM	Unit Bid Price	Total Bid Price
7	Mobilization	1	LS	\$1,974.00	\$1,974.00
8	Flow Management	1	WK	\$22,807.00	\$22,807.00
9	New Wet Well Hatch / Grate	1	EACH	\$3,995.00	\$3,995.00
10	Recoat Wet Well	1	LS	\$42,344.00	\$42,344.00
11	New 2" Stainless Steel	1	LS	\$11,235.00	\$11,235.00
13	Electrical Engineer - Arc-Flash / Site Lighting	1	LS	\$8,422.00	\$8,422.00
14	Davit Crane	1	EACH	\$2,438.00	\$2,438.00
				Total Price	\$93,215.00

Included;

- Rehabilitate wet well using SprayRoq corrosion protection
- Provide Flow Management for our work
- Provide air – gap for electrical into wet well
- Hatch / Slab includes safety grating

Clarifications

- Wet well is to be coated per Fuquay, Inc. standard specifications
- Existing piping configuration to be modified within dry vault. Conditions may allow for limited connections / flexibility

Should you have any questions or comments concerning our proposal, please contact me at your convenience at either 748-0188 or 940-8423. Thank you for the opportunity to provide you with pricing for this job order, we look forward to working with you on both this and future projects.

Sincerely,  
KE&G Construction, Inc.

Brian Janski



# Exhibit D

## Exhibit D

	Payment*	Running Total
Initial Payment	\$ 23,000.00	\$ 23,000.00
Year 1, July 1st 2017	\$ 23,000.00	\$ 46,000.00
Year 2, July 1st 2018	\$ 23,000.00	\$ 69,000.00
Year 3, July 1st 2019	\$ 23,000.00	\$ 92,000.00
Year 4, July 1st 2020	\$ 23,000.00	\$ 115,000.00
Year 5, July 1st 2021	\$ 23,000.00	\$ 138,000.00
Year 6, July 1st 2022	\$ 23,000.00	\$ 161,000.00
Year 7, July 1st 2023	\$ 23,000.00	\$ 184,000.00
Year 8, July 1st 2024	\$ 23,000.00	\$ 207,000.00
Year 9, Final Payment, July 1st 2025	\$ 6,457.00	\$ 213,457.00

\* Initial Payment due prior to Closing Date. Subsequent yearly payments due on July 1st of the invoiced year