



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: December 3, 2019

* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Laurence E. Harvey and Regina M. Harvey, husband and wife ("Harvey")

***Project Title/Description:**

Exchange Agreement No. ACQ-0751

***Purpose:**

The County will exchange 3.161 acres of vacant land located at W Diamond St and W Curtis St (the "County Property") for 3.203 acres of land owned by Harvey (the "Owner Property") located adjacent to Flowing Wells Regional Park (the "Park"). Prior to closing the transaction, Harvey will construct parking improvements on a portion of the Owner Property for the benefit of the Park. The County will retain a .251 acre sewer easement for existing sewer facilities, and a monitor well and access easement to manage existing monitor wells remaining on the County Property. Harvey will assume the contractual obligations of the County under its agreement with the adjoining property owner (DFA) with respect to access from the Frontage Road to the County Property, except for the payment obligation which terminates on April 20, 2020, as provided in section 4.4 of the Exchange Agreement.

***Procurement Method:**

Exempt pursuant to Pima County Code 11.04.020

***Program Goals/Predicted Outcomes:**

Pima County will convey vacant land in exchange for land with parking improvements and for future park uses, as depicted on Exhibit I-2 to the Exchange Agreement.

***Public Benefit:**

Recreational and aesthetic benefit to the community and users of the Park and The Chuck Huckelberry Loop.

***Metrics Available to Measure Performance:**

Pima County to convey 3.161 acres of land appraised at \$360,000, in exchange for (i) 3.203 acres of land appraised at \$240,000, and (ii) \$139,000 of new parking improvements paid for by Harvey. The difference of \$19,000 (\$379,000 - \$360,000) will be paid by the County at closing, and County will pay up to \$4,500 in closing costs, for a total County maximum cost of \$23,500.

***Retroactive:**

No

Location Map attached

06-20-2019 11:26:12 AM

TO: COB 11-25-19 (1)

Vers.: 1

Pgs.: 1/6

ADDENDUM

Revised 9/2019

Page 1 of 2

Procure Dept 11/22/19 PM04:07

Contract / Award Information

Document Type: CT Department Code: PW Contract Number (i.e., 15-123): 20*0154
Effective Date: 12/3/2019 Termination Date: 12/2/2020 Prior Contract Number (Synergen/CMS): _____
☒ **Expense Amount: \$** 23,500.00 ☐ Revenue Amount: \$ _____

***Funding Source(s) required:** PR-Flowing Wells Park

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.: _____

Effective Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

☐ Expense or ☐ 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): _____

Effective 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: Jim Rossi

Department: Public Works / Real Property

Telephone: 724-6318

Department Director Signature/Date: _____

Deputy County Administrator Signature/Date: _____

County Administrator Signature/Date: _____

(Required for Board Agenda/Addendum Items)

Proposed Disposition of County Property



Legend

- ☐ Parcels



Notes:



This map is a user generated static output from an Internet mapping site and is for information only. Data layers that appear on this map are subject to Pima County's ITO GIS database and any inaccuracies.

5/31/2019

Location Map Harvey Property



Legend

☐ Parcels



Notes:

920.8 0 460.41

Feet



This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map are subject to Pima County's ITD GIS disclaimer and use restrictions.

10/25/2019

CONTRACT	
NO.	<u>CT-PW-20X154</u>
AMENDMENT NO.	_____
This number must appear on all invoices, correspondence and documents pertaining to this contract.	



EXCHANGE AGREEMENT

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

1.1. Owner: Laurence E. Harvey and Regina M. Harvey, husband and wife

1.2. County: Pima County, a political subdivision of the State of Arizona

1.3. County's Maximum Costs: the sum of (i) County's share of Closing Costs; (ii) County's share of Prorations; and the County Contribution, which combined shall not exceed Twenty-three Thousand Five Hundred Dollars (\$23,500.00)

1.4. Title Company: Stewart Title and Trust, Teresa Montoya as **Escrow Agent**

1.5. Effective Date: the date Owner and County have approved and accepted this Agreement by affixing their signatures. The date County executes this Agreement is the date this Agreement is signed by the Chair of the Pima County Board of Supervisors.

1.6. County Property: the property legally described on **Exhibit A** and depicted on **Exhibit A-1**

1.7. Owner Property: the property legally described on **Exhibit B** and depicted on **Exhibit B-1**

1.8. Park Improvements: the improvements listed and depicted in **Exhibits I-1 and I-2**, to be constructed for the cost stated in **Exhibit I-3**

1.9. Parking Area: the portion of Owner's Property where the Park Improvements will be constructed as set forth on **Exhibit I-2**

1.10. Owner's Address: Laurence E. Harvey and Regina M. Harvey, 5348 N. Highway Dr., Tucson, AZ 85705, Email: tucsondirtguy@aol.com

1.11. County Address: Manager, Pima County Real Property Services, 201 N Stone Ave, 6th Flr, Tucson, AZ 85701-1207; E-mail: neil.konigsberg@pima.gov; and for notice purposes, copy: Kell Olson, Deputy County Attorney, Pima County Attorney's Office, Civil Division, 32 N Stone Ave, Suite 2100, Tucson, AZ 85701-1412.

2. **Parties; Effective Date.** This Agreement is between Owner and County, and will become effective on the Effective Date.

3. **Exchange of Properties; Consideration.**

3.1. County and Owner will exchange the County Property and the Owner Property pursuant to A.R.S. § 11-251(44) (the "**Exchange**"). The County shall publish notice thirty days before the Exchange, listing the ownership and description of the Owner Property and the County Property.

3.2. County and Owner agree that the value of the County Property exceeds the value of the Owner Property in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00) (the "**Cash Boot**"), which is an obligation of the Owner in this Exchange.

3.3. Owner agrees to construct and install the Park Improvements pursuant to Section 5.1 of this Agreement.

3.4. Owner and County acknowledge that the estimated cost to construct and install the Park Improvements exceeds the Cash Boot.

3.5. County agrees to pay to Owner at Closing the difference between the cost of the Park Improvements and the Cash Boot up to a maximum amount of \$19,000.00 (the "**County Contribution**").

4. **Easements; Well Agreement.** In consideration of the Exchange and the other terms and conditions of this Agreement, Owner and County agree as follows:

4.1. Reserved Easement. County shall reserve at Closing within the Special Warranty Deed in the form attached hereto as **Exhibit C**, an easement for the purpose of access, operation, maintenance and closure of existing wells within the boundaries of the

County Property in accordance with Arizona Department of Environmental Quality and Arizona Department of Water Resources or any other local, State or Federal requirements relating to the existing well facilities.

4.2. Sewer Easement. Owner shall grant County a public Sewer easement in the form of **Exhibit E ("Sewer Easement")** in, over, under and across the property described and depicted in *Exhibits A* and *A-1* to **Exhibit E ("Sewer Easement Area")**.

4.3. Well Agreement. The Owner Property shall be conveyed to the County free of any interest, obligations or liability associated with the well described in that certain Well Agreement recorded in the office of the Pima County Recorder, Pima County, Arizona, on February 27, 2018 in Seq. #20180580374. Owner shall retain all rights, obligations and liabilities associated with said well and Well Agreement.

4.4. Access to County Property. Owner acknowledges and agrees to take the County Property subject to the terms of the Agreement between DFA, a Nevada limited liability company and County attached hereto as Exhibit J (the "DFA Agreement"), specifically in regards to Paragraph 5. Owner acknowledges that pursuant to section 5.4 of the DFA Agreement, the Frontage Road Access and the Access Drive, as defined in the DFA Agreement, may be established and constructed on the County Property being conveyed to Owner. Owner will assume all of the obligations of County under section 5 of the DFA Agreement, except that:

4.4.1. County shall remain obligated for the payment under Paragraph 5.5 of the DFA Agreement through April 20, 2020; and

4.4.2. All plans must be reviewed and approved by the County pursuant to section 5.2.2. of the DFA Agreement

5. **Contingencies to Closing.** The Closing is contingent upon the following:

5.1. Park Improvements. Prior to Closing, Owner will cause the Park Improvements to be constructed and installed in the Parking Area as provided in **Exhibits I-1** and **I-2**, in a manner reasonably acceptable to County. Owner will remove all business assets from the Parking Area, including rock, gravel, sand, soils and equipment, prior to the start of construction of the Park Improvements. County shall deliver its acceptance of the Park Improvements in writing to Escrow Agent prior to Closing. The acceptance of the Park Improvements will be signed by the Director of Pima County Natural Resources,

Parks and Recreation ("**NRPR**") or his designee. Any change to the Park Improvements must be in writing and agreed to by Owner and County pursuant to Section 18 of this Agreement, except that any non-monetary changes may be approved for County by the Director of NRPR, or his designee.

5.2. Cleanup of Future Expansion Area: Prior to Closing, Owner will install a security fence on the northern and western boundary of the portion of Owner's Property not used for Park Improvements (the "**Future Expansion Area**") for the protection of Park patrons while Owner removes all business assets, including but not limited to rock, gravel, sand, soils and equipment, from the Future Expansion Area. Owner shall have ninety (90) days from Closing to complete the removal of said business assets and complete the application of hydro seed as outlined in Exhibit I-1.

5.3. Access to Owner's Retained Property. Owner agrees to install a fence, wall or barrier (the "**Fence**") on Owner's retained portion of parcel 101-14-313G described and shown in **Exhibit H** (the "**Retained Property**") upon completion of the cleanup outlined in Section 5.2 above to prevent any uses occurring on the Retained Property from encroaching onto the Owner Property acquired by County. Owner represents and warrants that any access points/driveways to and from the Public Road improvements serving Flowing Wells District Park shall be subject to the conditions of the Covenant in the form attached hereto as **Exhibit H**.

6. **Inspection Rights.**

6.1. Construction Coordination. Owner shall coordinate all construction activities and inspections relating to the Park Improvements with: Thomas Burklow, Pima County Natural Resources, Parks and Recreation; telephone number: (o) 520-724-5262, (c) 520-399-5780; e-mail address: thomas.burklow@pima.gov

6.2. Due Diligence Access. Upon execution of this Agreement and until Closing, Owner hereby grants permission to County, County's representatives, and County's authorized agents to enter the Owner Property for due diligence, including land survey, biological and cultural survey, and environmental assessment, and to monitor construction of the Park Improvements. Upon execution of this Agreement until Closing, County hereby grants permission to Owner, Owner's representatives, and Owner's authorized agents to enter the County Property for due diligence, including for land survey, biological and cultural survey, and environmental assessment.

6.3. Environmental Inspection. Each party shall permit the other party to conduct such inspections of the others property as deemed necessary to determine the environmental condition of the property. If the investigations reveal the presence of contamination or the need to conduct environmental cleanup, each party shall conduct a cleanup of its property adequate to bring the property into compliance prior to closing or the other party may terminate this Agreement.

7. **Escrow and Title.**

7.1. Proration and Closing Costs. Owner shall pay all taxes on the Owner Property to the date of Closing. Expenses incidental to transfer of title, including title reports, recording fees, escrow fees, and delivery fees, shall be paid 50% by the County and 50% by Owner. Each party shall be responsible for costs associated with any releases required to transfer title to its property free and clear and any costs associated with the issuance of title insurance for the property it is acquiring.

7.2. Escrow and Title Agent. This Agreement shall be used as escrow instructions in connection with the escrow established with Escrow Agent under this Agreement (the "**Escrow**"). Escrow Agent shall make reasonably suitable arrangements with County, upon County's request, to have County execute all of the documents to be executed by County as provided in this Agreement at the office of Escrow Agent that is located the closest to the office of County.

7.3. Title Commitment.

7.3.1. *Commitment.* Escrow Agent will distribute to County a Commitment for Standard Owner's Title Insurance on the Owner Property and the Easements (the "**Commitment**") together with complete and legible copies of all documents which will remain as exceptions to County's policy of title insurance. Escrow Agent will distribute to Owner a Commitment for Standard Owner's Title Insurance on the County Property together with complete and legible copies of all documents which will remain as exceptions to Owner's policy of title insurance.

7.3.2. *Permitted Exceptions*

7.3.2.1. The Closing shall be contingent upon Owner being insured pursuant to the Commitment and subject only to the exceptions listed in **Exhibit F** hereto

(the "*Permitted Exceptions to County Property*"), and the title policy shall be in the amount of \$360,000.00.

7.3.2.2. The Closing shall be contingent upon County being insured pursuant to the Commitment and subject only to the exceptions listed in **Exhibit G** hereto (the "*Permitted Exceptions to Owner Property*") and the title policy shall be in the amount of \$240,000.00.

7.3.2.3. Each conveyance of the County Property and the Owner Property shall be by Special Warranty Deed subject to (a) the liens of real estate taxes, water, rent and sewer charges that are not yet due and payable; (b) all matters of record including the applicable Permitted Exceptions which were accepted by the Grantee; and (c) all matters a survey or inspection of the property would reveal.

7.3.3. *Amended Commitment.* In the event Title Company should issue an Amended Commitment for Title Insurance to one of the parties which discloses an Exception(s) not previously disclosed, that party shall have 15 days after the receipt of the Amended Commitment and the new Exceptions (the "**Disapproval Period**") within which to notify the other party and the Escrow Agent in writing of its disapproval of any new Exceptions shown thereon (the "**Disapproval Notice**"). In the event of such disapproval, the party receiving the Disapproval Notice shall have 10 days from receipt of the Disapproval Notice in which to notify the disapproving party in writing whether it intends to eliminate each of the disapproved Exceptions prior to the Closing (the "**Notice Period**"). If the party receiving the Disapproval Notice fails to notify the disapproving party of its intent with respect to the disapproved items within that time or if it elects not to cure all disapproved items, the disapproving party may terminate this Agreement and the Escrow shall be canceled. If the Amended Commitment is issued less than 15 days prior to the date of the Closing, then the date of the Closing shall be deemed to be extended until the end of the Disapproval Period and the Notice Period, if applicable; provided however, that Closing must occur as provided in section 10.1.

8. **Security Interest.** Prior to Closing, each party shall obtain from any lienholders releases of (i) all nonconsensual liens, including but not limited to tax liens, mechanics liens, and judgment liens, and (ii) all consensual liens, including but not limited to mortgages, deeds of trusts, and contracts for sale, as required for the fee transfer of the County Property and Owner Property, free and clear of all liens and encumbrances.

9. **Closing Documents.** At Closing, the following documents will be executed:

9.1. County shall execute and deliver to Escrow Agent a Special Warranty Deed conveying title to the County Property to Owner as provided in form attached hereto as **Exhibit C.**

9.2. Owner shall execute and deliver to Escrow Agent a Special Warranty Deed to the Owner Property in form attached hereto as **Exhibit D.**

9.3. Owner shall deliver the executed Easement to County in form attached hereto as **Exhibit E.**

9.4. Owner shall execute the Covenant in the form of **Exhibit H.**

10. **Closing.**

10.1. Closing Date. The Closing (the "**Closing**") will take place at the office of Title Company on or before one hundred twenty (120) days after the Effective Date, provided however, that County or Owner may extend the Closing until thirty (30) days after receipt of all necessary releases or consents from Lienholders. Notwithstanding the foregoing, this Agreement will terminate if closing has not occurred within one year after the Effective Date.

10.2. Possession. Possession of the County Property will be delivered to Owner, and possession of the Owner Property will be delivered to County, at Closing.

11. **Representations.**

11.1. Each party represents that, to the best of its knowledge (i) no pollutants, contaminants, toxic or hazardous substances, wastes or materials have been stored, used, or are located on its property or within any surface or subsurface waters thereof; (ii) that no underground tanks have been located on its property; (iii) that its property is in compliance with all federal, state, and local environmental laws, regulations, and ordinances; and (iv) that no legal action of any kind has been commenced or threatened with respect to its property.

11.2. Subject only to the representations of the parties in this Section 11, each party acknowledges that neither party has made any representations or warranties of any nature to the other, and the property interests acquired by each party are acquired "AS

IS" and "WHERE IS," with all faults and limitations, and all defects, latent or otherwise. Each party who is the grantee of the interests subject to this Agreement further represents to the other that it has fully and completely examined the property, conducted inspections thereof, including environmental assessments to the extent such grantee has felt necessary or advisable, and releases the other party from any and all liability, obligation or responsibility in any way relating to the condition of the land. This release survives closing.

11.3. The parties acknowledge that other than the improvements outlined in Section 5 above and some remaining fencing on the Owner property, the Owner Property and the County Property are vacant land and that no personal property is being transferred. County shall retain ownership of and responsibility for the well improvements and the sewer improvements within the County Property as detailed in Sections 4.1 & 4.2; and Exhibits C & E herein. Owner shall retain ownership of and responsibilities associated with the well and Well Agreement detailed in Section 4.3 herein.

12. **Leases.**

12.1. Owner represents that there are no oral or written leases, rental agreements, licenses, permits, or any other agreements permitting a third party to use or occupy all or any portion of its property.

12.2. County represents that there is a Ground Lease affecting a portion of the County Property dated May 12, 2015 between County and Mountain View Tours, Inc., an Arizona corporation at a current rental rate of \$1,605.82 per month. Owner acknowledges receipt of a copy of said Ground Lease and agrees to take title subject to the Lease. County represents that there are no other oral or written leases, rental agreements, licenses, permits, or any other agreements (other than outlined in Section 4 above) permitting a third party to use or occupy all or any portion of its property.

13. **Broker's Commission.** The parties acknowledge that no broker or finder has been used for this transaction. Each party shall indemnify and hold harmless the other against fees, costs, and expenses of defending against such claims made by any one claiming to have been employed for this transaction.

14. **No Sale.** Neither party shall sell or encumber its property before closing.

15. **Notices.**

15.1. Writing. All notices required or permitted to be given hereunder shall be in writing and may be given in person or by United States mail, by local or nationwide delivery/courier service or by electronic transmission (for instance, e-mail to the e-mail addresses indicated below).

15.2. Receipt. Such notices and other communications shall be deemed to be given and received as follows: (a) upon actual receipt, if delivered personally; (b) upon actual receipt, if transmitted by e-mail on a business day before 5:00 p.m. (Tucson time); (c) upon the next business day following transmission if transmitted by e-mail on a day which is not a business day or if transmitted after 5:00 p.m. (Tucson time) on a business day; (d) the next business day, if delivered by overnight courier; or (e) three days following deposit in the mail, if delivered by mail postage prepaid, addressed to that party at his/her/their/its designated address. The designated address of a party shall be the address of that party shown below or such other address within the United States of America that any party from time to time may specify by written notice to the other parties at least 15 days prior to the effective date of such change, but no such notice of change shall be effective unless and until received by the other parties.

15.3. Rejection. Rejection or refusal to accept, or inability to deliver because of changed address or because no notice of changed address is given, shall be deemed to be receipt of any such notice.

15.4. Notice to Entity. Any notice to an entity shall be deemed to be given on the date specified in this section without regard to when such notice is delivered by the entity to the individual to whose attention it is directed and without regard to the fact that proper delivery may be refused by someone other than the individual to whose attention it is directed. If a notice is received by an entity, the fact that the individual to whose attention it is directed is no longer at such address or associated with such entity shall not affect the effectiveness of such notice.

15.5. Address. County and Owner agree that any notice sent to the address set forth in Sections 1.10 and 1.11 herein shall serve as notice by County or Owner, as the case may be, to the other.

16. **Conflict of Interest.** This Agreement is subject to cancellation within three 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 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.

17. **Survival of Representation and Warranties.** All representations and warranties contained herein survive the closing for ten years.

18. **Entire Agreement.** This signed document constitutes the entire Agreement between the parties, and no modification or amendment to this Agreement will be binding unless in writing and signed by both parties.

19. **Remedies.** If either party defaults under this Agreement, the other party may pursue all rights and remedies available at law or in equity.

20. **Exhibits.** The following Exhibits to this Agreement are fully incorporated herein as if set forth at length. To the extent that any Exhibits to this Agreement or to any of the Exhibits hereto are not available at the execution hereof, they shall be added by the Parties prior to Closing and shall be in form and substance reasonably satisfactory to the Parties.

<u>Exhibit A</u>	Legal Description of County Property
<u>Exhibit A-1</u>	Depiction of County Property
<u>Exhibit B</u>	Legal Description of Owner Property
<u>Exhibit B-1</u>	Depiction of Owner Property
<u>Exhibit C</u>	Form of Special Warranty Deed (County Property)
<u>Exhibit D</u>	Form of Special Warranty Deed (Owner Property)
<u>Exhibit E</u>	Form of Sewer Easement
<u>Exhibit F</u>	Permitted Exceptions to County Property
<u>Exhibit G</u>	Permitted Exceptions to Owner Property
<u>Exhibit H</u>	Covenant for Installation of Driveway Improvements
<u>Exhibit I-1</u>	Park Improvements
<u>Exhibit I-2</u>	Depiction of Park Improvements
<u>Exhibit I-3</u>	Initial Estimate of Park Improvements
<u>Exhibit J</u>	DFA Agreement

Each Party is signing this agreement on the date stated opposite that Party's signature.

Owner:

	11-21-2019		11-21-2019
Laurence E. Harvey	Date	Regina M. Harvey	Date
		HER ATTORNEY IN FACT	

Remainder of Page Intentionally Left Blank
County Signatures Follow

COUNTY: PIMA COUNTY, a political subdivision of the State of Arizona:

Chairman, Board of Supervisors

Date

ATTEST:

Julie Castaneda, Clerk of Board

Date

APPROVED AS TO CONTENT:



Neil J. Konigsberg, Manager, Real Property Services

 11/22/19

Carmine DeBonis, Deputy County Administrator, Public Works

APPROVED AS TO FORM:



Kell Olson, Deputy County Attorney

EXHIBIT A

27 August 2019

EXHIBIT "A"
LEGAL DESCRIPTION

All that portion of that parcel as described in Docket 9898 at Page 750, and that parcel as described in Docket 12050 at Page 7145, recorded in the office of the County Recorder, Pima County, Arizona, being located in the Southeast Quarter of Section 17, Township 13 South, Range 13 East, Gila & Salt River Meridian, Pima County, Arizona, more particularly described as follows:

COMMENCING at the center corner of said Section 17, shown as point number 75 in Book 68, Records of Survey, Page 69 and monumented by an aluminum cap set in concrete, marked "PE 1260, C+17," from which the south quarter corner of said section, shown as point number 119 per said Record of Survey, monumented by a brass disk stem, bears South 00°14'52" West, a distance of 2640.62 feet (basis of bearing for this legal description);

THENCE along the west line of said southeast one quarter South 00°14'52" West a distance of 1,049.84 feet to the southwest corner of said parcel described in Docket 9898 at Page 750;

THENCE along the south line of said parcel, North 89°24'21" East a distance of 50.00 feet to the **POINT OF BEGINNING**, being a point on a line 50.00 feet east of and parallel with said west line of the southeast one quarter;

THENCE along said parallel line North 00°14'52" East a distance of 273.74 feet to a point on a line 115.00 feet south of and parallel with the north line that parcel described in Docket 12050 at Page 7145;

THENCE along said parallel line, North 89°30'38" East a distance of 159.63 feet to a point on the west line of that parcel described in Docket 9898 at Page 750;

THENCE continuing along said parallel line North 89°21'12" East a distance of 217.38 feet;

THENCE North 53°32'11" East a distance of 196.51 feet to a point on the west right of way line of Interstate 10 as defined in Docket 11666 at Page 8680;

THENCE along said west right of way line South 40°27'35" East a distance of 141.87 feet;

THENCE continuing along said west right of way line South 35°26'19" East a distance of 53.00 feet to the northeasterly corner of that parcel described in Sequence No. 20151340130;

THENCE along the northwesterly line of said parcel South 54°09'50" West a distance of 261.04 feet to the northwesterly corner of said parcel;

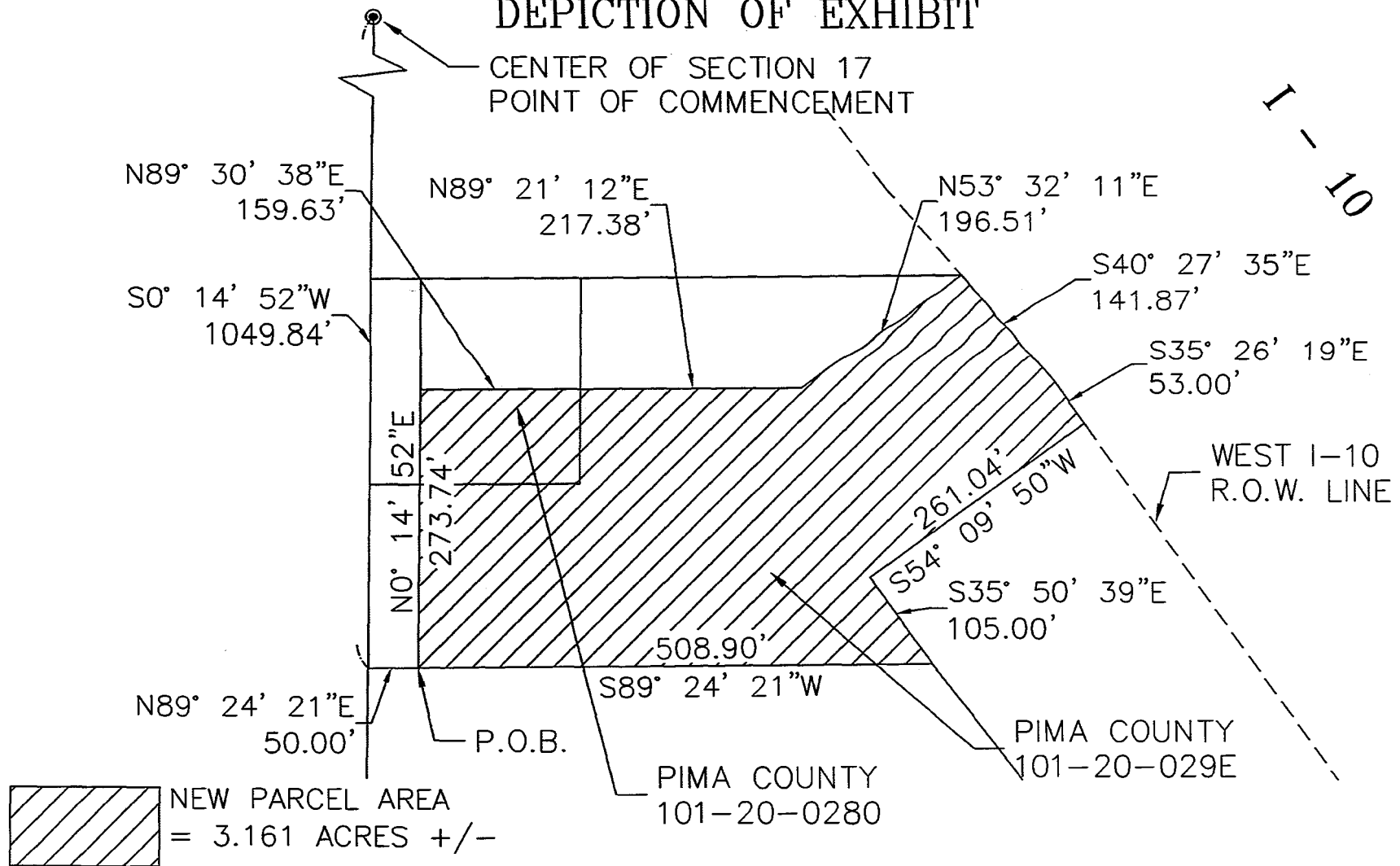
THENCE along the westerly line of said parcel South 35°50'39" East a distance of 105.00 feet to the south line of said parcel described in Docket 9898 at Page 750;

THENCE along said south line South 89°24'21" West a distance of 508.90 feet to the **POINT OF BEGINNING**.



EXHIBIT A-1

DEPICTION OF EXHIBIT



PIMA COUNTY SURVEY

A PORTION OF PARCELS DESCRIBED IN
DKT 9898, PG 750 & DKT 12050, PG 7145
LOCATED IN SECTIONS 17, TOWNSHIP 13 SOUTH, RANGE 13 EAST,
GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

Scale: 1" = 150'

Date: 27 August 2019

Drawn By: DRT

Sheet 3 of 3

EXHIBIT B

20 May 2019

EXHIBIT "B"
LEGAL DESCRIPTION

All that portion of the Southeast Quarter of the Northwest Quarter of Section 16, Township 13 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, more particularly described as follows:

COMMENCING at the southeast corner of the Northwest Quarter of said Section 16;

THENCE along the East line of the Northwest quarter of said Section 16, North 00°22'45" East a distance of 775.00 feet to the **POINT OF BEGINNING**;

THENCE continuing along the East line of the Northwest quarter of said Section 16, North 00°22'45" East a distance of 426.98 feet to the Southeast corner of the parcel described in Docket 9859 at page 148 recorded in the office of the Pima County Recorder, Pima County, Arizona;

THENCE along the South line of said parcel described in Docket 9859 at page 148, South 89°50'37" West, a distance of 326.01 feet to the East line of the parcel described in Docket 7814 at page 1770 recorded in the office of the Pima County Recorder, Pima County, Arizona, said line being 326.00 feet West of and parallel with the East line of said Northwest quarter;

THENCE along said parallel line and East line South 00°22'45" West a distance of 426.98 feet to the Southeast corner of said parcel described in said Deed recorded in Docket 7814 at page 1770 and on a line that is 775.00 feet North of and parallel with the South line of said Northwest quarter;

THENCE along said parallel line South 89°47'00" East a distance of 326.00 feet to the **POINT OF BEGINNING**;



EXHIBIT "B-1"

DEPICTION OF EXHIBIT

PIMA COUNTY
101-14-311A
DKT 7814 PG 1770

PIMA COUNTY
101-14-313J
DKT 9859 PG 148

101-14-313H
DKT 9249 PG 246
PARCEL 2

101-14-313G
DKT 9249 PG 246
PARCEL 1



AREA =
3.203 ACS ±

CURTIS

ROAD



PIMA COUNTY SURVEY

A PORTION OF PARCELS 1 AND 2 DOCKET 9249 PAGE 246
LOCATED IN SECTION 16, TOWNSHIP 13 SOUTH, RANGE 13 EAST,
GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

Scale: 1" = 200'

Date: 20 May 2019

Drawn By: DRT

Sheet 1 of X

EXHIBIT C

EXHIBIT "C"

Exempt from Affidavit of Value per A.R.S. § 11-1134(A)(3).

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, PIMA COUNTY, a political subdivision of the State of Arizona, the "Grantor" herein, does hereby convey to Laurence E. Harvey and Regina M. Harvey, husband and wife, 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** and depicted in **Exhibit A-1** attached hereto.

Together with that certain non-exclusive ingress and egress reserved in the Special Warranty Deed recorded in the Office of the Pima County Recorder, Pima County, Arizona in Seq. #20151340130.

Except reserving unto Grantor, for the benefit of Grantor, the following:

Well ingress and egress, operation, testing, maintenance, closure and removal. Grantor reserves a blanket, non-exclusive easement for ingress and egress across the entire Property to access, operate, test, maintain, close and remove existing wells within the Property.

Termination of Easement. This easement shall terminate automatically upon Grantor's having completed removal of all of the existing well facilities within the Property.

Subject to all taxes and other assessments, reservations in Patents, and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations and

EXEMPTION: A.R.S. §11-1134.A.3.		Board of Supervisors:	Right of Way <input type="checkbox"/> Parcel <input checked="" type="checkbox"/>
Agent: BB	File #: Acq-0751	Activity #:	P <input checked="" type="checkbox"/> De <input type="checkbox"/> Do <input type="checkbox"/> E <input type="checkbox"/>

liabilities as may appear of record and all matters a survey or inspection of the Property would reveal.

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.

Restrictive Covenant.

Restriction. By accepting the Property, the Grantee, for himself, herself, his/her heirs, 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 in the construction, maintenance, or operation of any facilities or structures whatsoever on the Property, the grantee will not discriminate against any person on the grounds of that person's age, race, creed, color, religion, sex, disability or national origin.

Nature of Restriction. This Restrictive Covenant shall apply in perpetuity and shall run with the Property. The Restriction imposed shall be non-revocable without the written consent of at least 4 of the 5 members of the Pima County Board of Supervisors. The Restriction shall remain in effect notwithstanding any future annexation of any portion of the land by a municipality.

Enforcement of Restriction. Grantor may enforce the terms of this Restrictive Covenant through any available legal or equitable remedy, including but not limited to damages, and injunctive relief requiring the Grantee to cease and desist all activity in violation of this Restrictive Covenant. The failure of Grantor to insist upon the full and complete performance of any of the terms and conditions of this Restrictive Covenant, or to take any action permitted as a result thereof, shall not be construed as 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.

Protection of Cultural Resources.

In compliance with Pima County Board of Supervisors Policy Number C 3.17, Grantee is hereby notified that buried cultural resources (archeological or historic resources) may be present on the Property. In the event development or ground disturbance is planned, cultural resources compliance (inventory, assessment and/or mitigation) will be required, as approved by Pima County.

EXEMPTION: A.R.S. §11-1134.A.3.		Board of Supervisors:	Right of Way <input type="checkbox"/> Parcel <input checked="" type="checkbox"/>
Agent: BB	File #: Acq-0751	Activity #:	P <input checked="" type="checkbox"/> De <input type="checkbox"/> Do <input type="checkbox"/> E <input type="checkbox"/>

Grantee is aware that there may be limitations on ground disturbing activity and conveyance of title before cultural resources compliance requirements are met. All such inventory, assessment and/or mitigation costs are the responsibility of Grantee.

Pima County, a political subdivision of the State of Arizona

By: Neil J Konigsberg
Manager, Pima County Real Property Services

Date

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me the ____ day of _____, 20__ by _____.

Notary Public

My Commission Expires: _____

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK

Grantee's Acceptance Follows

Page 3 of 4

EXEMPTION: A.R.S. §11-1134.A.3.		Board of Supervisors:	Right of Way <input type="checkbox"/> Parcel <input checked="" type="checkbox"/>
Agent: BB	File #: Acq-0751	Activity #:	P <input checked="" type="checkbox"/> De <input type="checkbox"/> Do <input type="checkbox"/> E <input type="checkbox"/>

Accepted and Approved by Grantee this _____ day of _____
_____, 2019:

Laurence E. Harvey

Regina M. Harvey

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me the _____ day of _____, 20__ by Laurence E. Harvey and Regina M. Harvey, husband and wife.

Notary Public

My Commission Expires: _____

Page 4 of 4

EXEMPTION: A.R.S. §11-1134.A.3.		Board of Supervisors:	Right of Way <input type="checkbox"/> Parcel <input checked="" type="checkbox"/>
Agent: BB	File #: Acq-0751	Activity #:	P <input checked="" type="checkbox"/> De <input type="checkbox"/> Do <input type="checkbox"/> E <input type="checkbox"/>

EXHIBIT D

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, Laurence E. Harvey and Regina M. Harvey, husband and wife, the "Grantor" herein, does hereby convey to Pima County, a political subdivision of the State of Arizona, the "Grantee" herein, the real property situated in Pima County, Arizona, described in **Exhibit A** and depicted in **Exhibit A-1** attached hereto; together with all right title and interest of the Grantor in and to that certain Ingress/Egress Easement recorded in the Office of the Pima County Recorder, Pima County, Arizona, on August 18, 1994 in Docket 9859 at Page 152, including any rights, title and interest in said Easement that could benefit the Grantor's remaining property.

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.

Laurence E. Harvey

Regina M. Harvey

STATE OF ARIZONA

COUNTY OF PIMA

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by Laurence E. Harvey and Regina M. Harvey,
husband and wife.

Notary Public

My Commission Expires: _____

Page 1 of 1

EXEMPTION: A.R.S. §11-1134.A.3.		Board of Supervisors:	Right of Way [] Parcel [X]
Agent: jr	File #: Acq-0751	Activity #:	P [X] De [] Do [] E []

EXHIBIT E

EXHIBT "E"

PUBLIC SEWER EASEMENT

For valuable consideration, Laurence E. Harvey and Regina M. Harvey, husband and wife, "Grantor", does hereby grant to Pima County, a political subdivision of the State of Arizona, "County", a permanent easement (the "Easement") for the construction, installation, maintenance, repair, operation, replacement and removal of sewer lines, manholes and appurtenances (collectively, "Facilities") in, over, under and across the real property described on the attached **Exhibit "A"** and depicted on **Exhibit "A-1"** (the "Property").

Grantor may use the Property for any purpose consistent with the exercise of the Easement by County. Grantor agrees to maintain the Easement free of any obstruction or encroachments at all times, that would block or impede County from driving large sewer maintenance vehicles along this Easement to the County Facilities or from constructing, installing, maintaining, repairing, operating or removing the Facilities. Such obstructions or encroachments include, but are not limited to: fences, walls, boulders, stone rip-rap, paving, curbs, trees, large shrubs or cacti, special or elaborate plantings, storage sheds, swimming pools, parked vehicles, etc.

County may, without notice and without prior institution of any suit or proceeding at law, remove any obstruction or encroachment from the Property that blocks or impedes County's vehicular access to its Facilities or limits County's ability to construct, maintain, repair, service, replace and remove County's Facilities. Should the removal of obstructions or encroachments from the Property be necessary to obtain adequate vehicular access or to construct, maintain, repair, service, replace and remove County's Facilities, Grantor shall reimburse County for all associated removal activities.

County may, without notice and without prior institution of any suit or proceeding at law, enter on the Property at any time for the purpose of construction, maintenance, repair, service, replacement and removal of any County Facilities. Following any use of the Property for the above purposes, County will reasonably restore the Property to its general condition existing prior to County's use provided, however, County will not replace, repair, or restore obstructions or encroachments nor shall County reimburse Grantor for losses associated with damage or removal of the obstructions or encroachments.

Agent: JAR		ACQ-0751	S 17/T 13S/R 13E	P <input type="checkbox"/> De <input type="checkbox"/> Do <input type="checkbox"/> E <input checked="" type="checkbox"/>
------------	--	----------	------------------	--------------------------------------------------------------------------------------------------------------------------

This Easement and the covenants, terms, and conditions contained herein are intended to and shall run with the Property and shall be binding upon County and Grantor and their respective successors, heirs, and assigns. Grantor warrants that Grantor has good title to the Property and warrants the County title to and quiet enjoyment of the Easement. Upon execution, the Easement shall be recorded with the Pima County, Arizona, Recorder's Office. The grants, covenants and provisions herein shall be binding on and inure to the benefit of the heirs, successors and assigns of the parties hereto.

The landscaping within all public sewer easements shall be in accordance with the current guidelines of Pima County Regional Wastewater Reclamation Department Engineering Design Standards.

THIS EASEMENT granted this _____ day of _____, 2019.

Grantor(s):

Laurence E. Harvey

Regina M. Harvey

STATE OF ARIZONA)
) §

COUNTY OF PIMA)

This instrument was acknowledged before me this ____ day of _____, 2019, by Laurence E. Harvey and Regina M. Harvey, husband and wife.

Notary Public

Agent: JAR	ACQ-0751	S 17 /T 13S /R 13E	P [] De [] Do [] E [X]

20 May 2019

EXHIBIT "A" to EXHIBIT "E"
LEGAL DESCRIPTION

A portion of that parcel as described in Docket 9898 at Page 750, and that parcel as described in Docket 12050 at Page 7145, recorded in the office of the County Recorder, Pima County, Arizona, being located in the Southeast Quarter of Section 17, Township 13 South, Range 13 East, Gila & Salt River Meridian, Pima County, Arizona, more particularly described as follows:

COMMENCING at the center corner of said Section 17, shown as point number 75 in Book 68, Records of Survey, Page 69 an aluminum cap set in concrete, marked "PE 1260, C+17," from which the south quarter corner of said section, shown as point number 119 per said Record of Survey a brass disk stem, bears South 00°14'52" West, a distance of 2640.62 feet;

THENCE along the west line of said southeast one quarter South 00°14'52" West a distance of 1,049.84 feet to the southwest corner of said parcel described in Docket 9898 at Page 750;

THENCE along the south line of said parcel, North 89°24'21" East a distance of 50.00 feet to the **POINT OF BEGINNING**, being a point on a line 50.00 feet east of and parallel with said west line of the southeast one quarter;

THENCE along said parallel line North 00°14'52" East a distance of 273.74 feet to a point on a line 115.00 feet south of and parallel with the north line that parcel described in Docket 12050 at Page 7145;

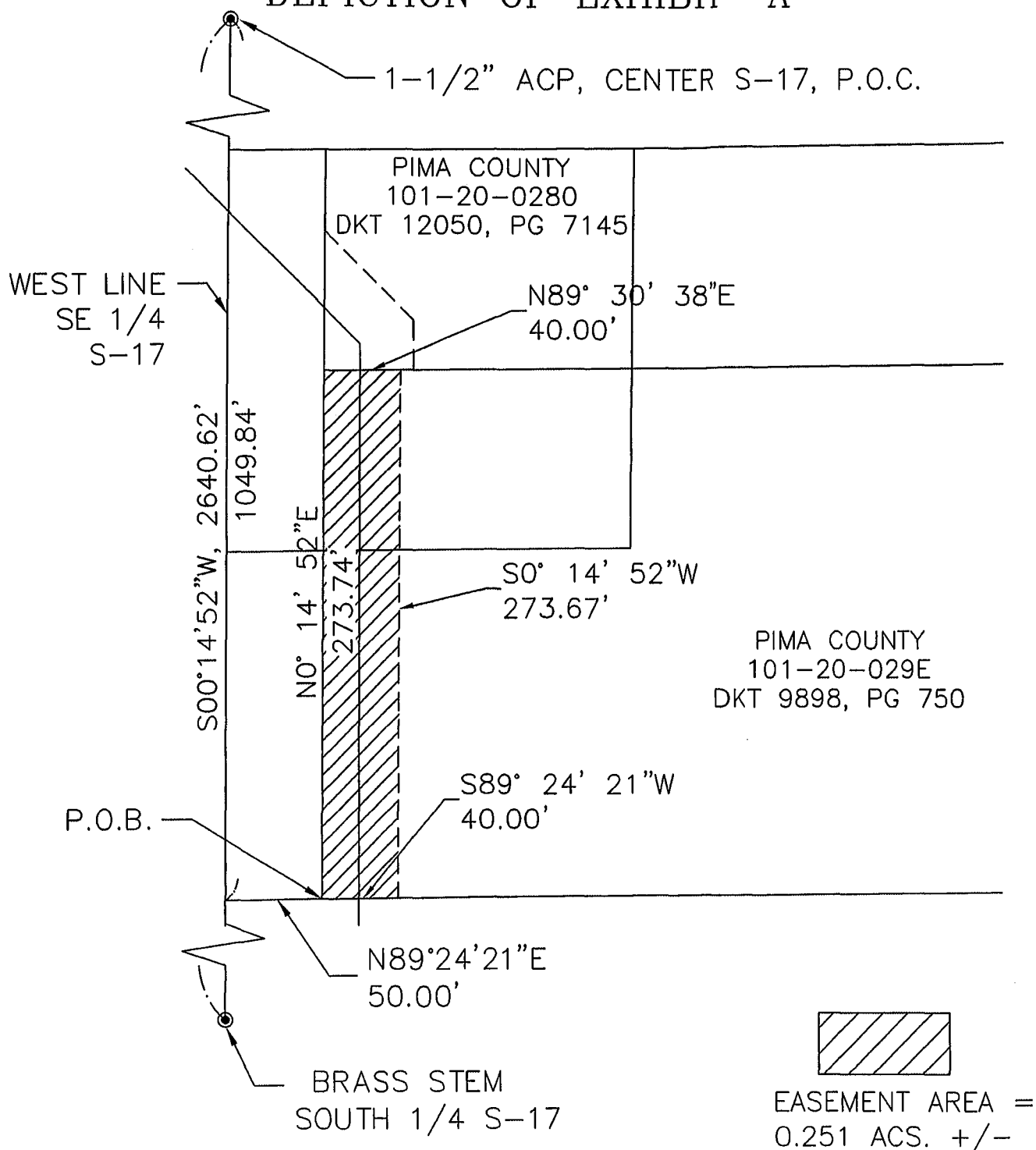
THENCE along said parallel line, North 89°30'38" East a distance of 40.00 feet to a point on a line 90.00 feet east of and parallel with said west line of the southeast one quarter;

THENCE along said parallel line South 00°14'52" West a distance of 273.67 feet to a point on the south line of said parcel described in Docket 9898 at Page 750;

THENCE along said south line South 89°24'21" West a distance of 40.00 feet to the **POINT OF BEGINNING**.



DEPICTION OF EXHIBIT "A"



PIMA COUNTY SURVEY

A PORTION OF THAT PARCEL PER DOCKET 12050, PAGE 7145
LOCATED IN SECTION 17, TOWNSHIP 13 SOUTH, RANGE 13 EAST,
GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

Scale: 1" = 75'

Date: 20 MAY 2019

Drawn By: DRT

Sheet 2 of 2

EXHIBIT F

Exhibit “F”

Exceptions

File No.: 543815

1. Reservations or exceptions in Patents or in Acts authorizing the issuance thereof.
2. A perpetual easement to Tucson Irrigation Company for water pipes, conduits, canals or ditches, poles for electric wires and telephone; AND a perpetual easement to Tucson Farms Company for water pipes, gas pipes, poles for electric wires and telephone; AND easement to Tucson Gas Electric Light & Power Company for maintenance of power lines and appurtenances thereof; as set forth in instrument recorded in Book 79 of Deeds at page 290.
3. The right to limit, restrict or control access to Interstate I-10 recorded in Docket 5871 at page 320.
4. Provisions within Resolution No. 1989-59 to condemn for water well sites recorded in Docket 8514 at page 1253.
5. Restrictions, Conditions, Covenants, Reservations, including but not limited to any recitals creating easements, liabilities, obligations or party walls, omitting, if any, from the above, any restrictions based on race, color, religion, sex, handicap, familial status or national origin contained in instrument recorded in Docket 9898 at page 750.
6. Terms and conditions of Sewer Easement recorded in Docket 10845 at page 2559 and by matters shown on survey recorded in Book 68 of Maps, page 69..
7. Easement for [electric transmission lines or systems] and rights incident thereto, as set forth in instrument recorded in Docket 13591, page 705.
8. Terms and conditions contained in Resolution of Establishment recorded 02/26/2018 in Sequence No. 2018-0570661.
9. Terms and conditions of Sewer Easement recorded in Sequence No. .
10. Reservation of a blanket Easement for ingress and egress, operation, testing, maintenance, closure and removal of wells recorded in Sequence No. .

EXHIBIT G

EXHIBIT “G”

Exceptions

File No.: 221998

1. Reservations or exceptions in Patents or in Acts authorizing the issuance thereof, recorded in Book 278 of Deeds at page 466.
2. Easement for electrical transmission facilities and appurtenances, and rights incident thereto, as set forth in instrument recorded in Docket 644 at page 77.
3. Easement for electrical transmission facilities and appurtenances, and rights incident thereto, as set forth in instrument recorded in Docket 1393 at page 378.
4. Easement for sewer facilities and appurtenances, and rights incident thereto, as set forth in instrument recorded in Docket 1864 at page 283.
5. Declaration of Restrictions and Covenants Running with the Land, and rights and obligations incident thereto, as set forth in instrument recorded in Docket 6004 at page 762.
6. Resolution No. 1992 – FC15 by the Pima County Flood Control District, and rights and obligations incident thereto, as set forth in instrument recorded in Docket 9664 at page 500.

EXHIBIT H

EXHIBIT "H"

COVENANT FOR INSTALLATION OF DRIVEWAY IMPROVEMENTS

THIS Covenant for Installation of Driveway Improvements ("**Covenant**") is made this ____ day of _____ 2019 ("**Effective Date**"), by Laurence E. Harvey and Regina M. Harvey, husband and wife, ("**Grantor**") in favor of Pima County ("**County**"), a political subdivision of the state of Arizona.

RECITALS

A. Grantor owns in fee simple the real property generally described as the North 308.00 feet of the South 775.00 feet of the East 326.00 of the Northwest Quarter of Section 16, Township 13 South, Range 13 East Gila & Salt River Meridian, Pima County, Arizona, depicted on Schedule 1 (the "**Property**");

B. Public right of way abutting the Property was dedicated to Pima County by Deed recorded in the office of the Pima County Recorder, Pima County, Arizona, in Docket 9859, Page 152 (the "**Right of Way**");

C. The Property is unimproved and unpaved;

D. The Right of way is paved and improved, providing primary access to Flowing Wells District Park;

E. Access to the Property from the Right of Way is currently limited to a single unimproved access point;

F. County and Grantor desire to outline conditions for improved access to the Property;

NOW, THEREFORE, in consideration of the above recitals, and the mutual covenants, terms, conditions and restrictions contained herein, Grantor hereby agrees and covenants to improve and maintain any access to and from the Right of Way as follows:

1. Grantor shall improve and maintain a concrete or asphalt driveway apron measured back 30 feet from the east line of the Right of Way and of adequate width and radius to reduce dust and protect the edges of the public road improvements from damage caused from vehicles accessing the Property.
2. If vehicles entering and exiting the Property deposit excess amounts of rock, sand or soil within the improved Right of Way, Grantor shall, within 5 days, maintain and sweep the Right of Way and apron to remove said deposits and reduce undue wear on the public improvements.

IN WITNESS WHEREOF, the parties have executed this Restrictive Covenant as of the date set forth below.

Dated the ____ day of _____, 20____

GRANTOR(S)

Laurence E. Harvey

Regina M. Harvey

State of Arizona)

)§

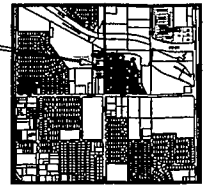
County of Pima)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Laurence E. Harvey and Regina M. Harvey, husband and wife.

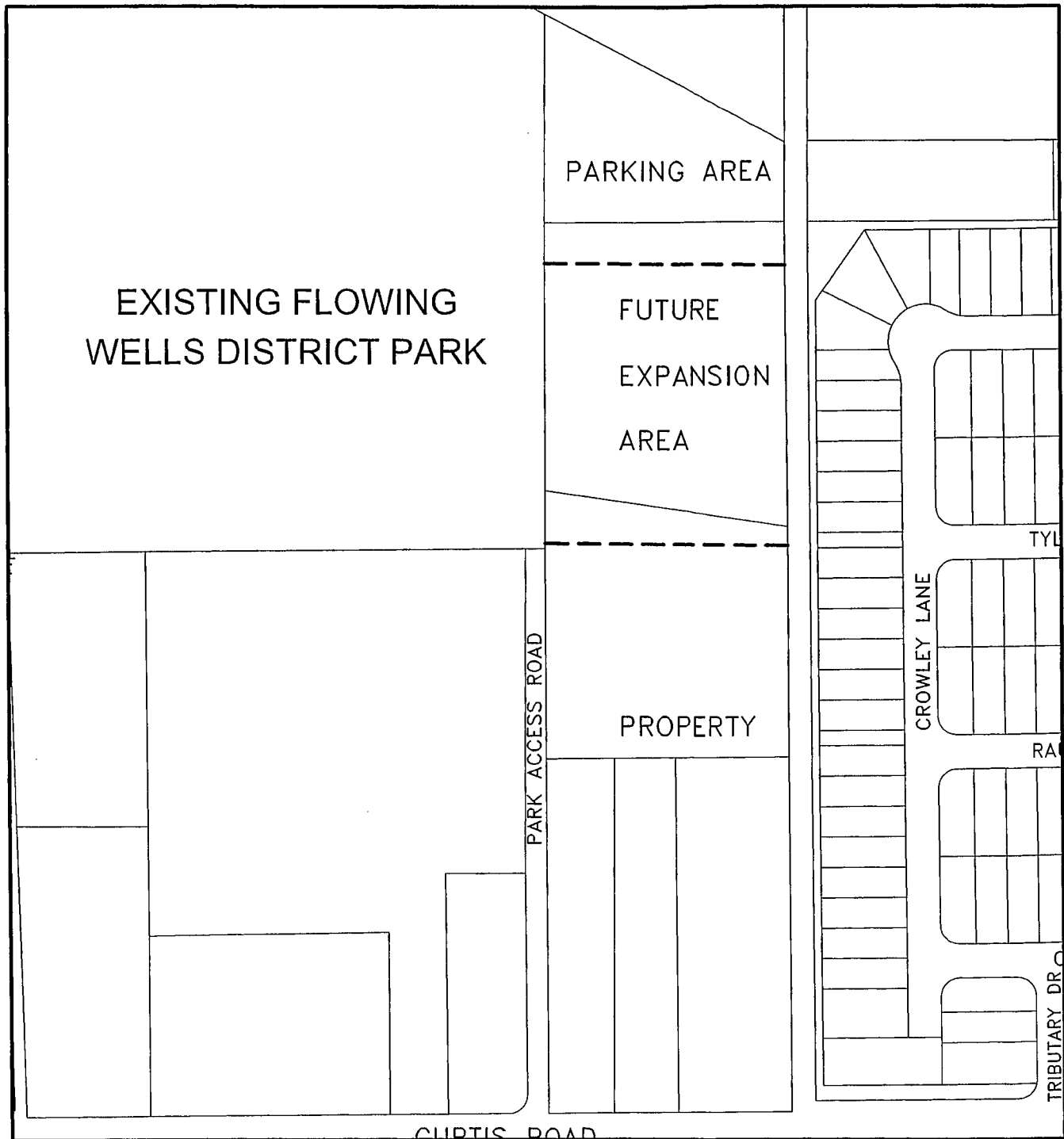
SECTION 16
TOWNSHIP 13 SOUTH
RANGE 13 EAST

SCHEDULE 1 TO COVENANT

SUBJECT AREA



SECTION 16
G&SRM
PIMA COUNTY, ARIZONA



19035

PIMA COUNTY DEPARTMENT OF TRANSPORTATION
ENGINEERING INFORMATION MANAGEMENT

DRAWING NOT TO SCALE

DRAWN BY: SBUTLER

DATE: OCT 2019

EXHIBIT I

EXHIBIT I-1

This Exhibit describes the Park Improvements depicted by the attached Exhibit I-2 to be completed by Owner:

Items 1-2 are conditions of sale that are not compensable.

1. Remove all Owner's stockpiled material and equipment from Owner Property and maintain a security fence, all as detailed in Section 6.1 of this Agreement
2. Grade the Owner Property generally to drain to the north-northeast with a small swale along the south side of the new parking improvements to prevent storm water from the roughly 200'x300' future park area from entering the new improved parking areas.

Items 3-10 are conditions of sale that are compensable and shall be credited to the Owner in accordance with Section 5 of this Agreement.

3. Hydro seed the roughly 200'x300' future park area.
4. Demolish and remove two sections of the existing concrete curb to accommodate the two new driveways. Retain the remaining curb as the face of the sidewalk described in paragraph #8 below.
5. Remove approximately 140 feet of chain link fence/gate that runs north/south and approximately 325 feet of chain link fence that runs east/west.
6. Grade the new parking area to drain south parking rows to a center island swale and the north parking rows to the row of trees due north along the Loop, keeping the existing trees to the north viable.
7. Improve the new parking areas with 2.5 inches of finished (non rap) asphalt over AB, with a Maricopa Edge graded flush. The asphalt areas are estimated to cover approximately 32,000 square feet.
8. Construct a 5 foot wide ADA compliant concrete sidewalk with a maximum 2% cross slope running along the east side and north side of the existing driveway behind the existing curb. The sidewalk shall be improved from the north side of the new south drive, continuing north and west to the existing sidewalk within the existing Park Property.
9. Place approximately 33 cubic yards of rock mulch within the center island swale.
10. Stripe parking spaces with standard 4 inch pavement markings and place parking stops at edge of pavement at the front of each of 22 spaces x 4 rows or 88 total parking spaces.



Pima County Regional Flood Control District
 201 N. Stone Ave - 9th Floor
 Tucson, Arizona 85701-1797
 (520) 724-4600, FAX: (520) 724-4621
<http://www.rfcd.pima.gov>

EXHIBIT I-2



Date: 8/12/2019

The information depicted on this display is the result of digital analyses performed on a variety of databases provided and maintained by several governmental agencies. The accuracy of the information presented is limited to the collective accuracy of these databases on the date of the analysis. The Pima County Regional Flood Control District makes no claims regarding the accuracy of the information depicted herein.

This product is subject to the GIS Division Disclaimer and Use Restrictions.

EXHIBIT I-3

AGE Contracting
3190 N Silver Hills Dr
Lic# A-1-111084

September 12, 2019

To: Pima County

Re: Flowing Wells District Park Improvements

PROPOSAL:

Mobilization Fee	1	\$2,500.00	
Sub Total			<u>\$2,500.00</u>
Grading (The South Area 200x300); Scarify and Hydro Seed (60,000 sf)	1	\$5,750.00	
Sub Total			<u>\$5,750.00</u>
Grade North End and pave Parking Lot			
Demo Existing Curb	1	\$850.00	
Demo and Remove existing chain link fence	1	\$850.00	
Subgrade existing grade	1	\$6,500.00	
Grade Swayle	175	\$2,000.00	
Rip Rap Swayle	875	\$5,625.00	
6" Vertical Returns	80	\$1,460.00	
Access Ramp	3	\$6,100.00	
4" side walk	300 sq	\$2,000.00	
Sub Total			<u>\$25,385.00</u>
Paving			
2.5 A/C with Maricopa Edge and ABC	88 PS	\$89,800.00	
Stripping	1	\$600.00	
Wheel Stops	88	\$4,400.00	
Sub Total			<u>\$94,800.00</u>
Final Clean Up			<u>\$2,000.00</u>
Grand Total		<u>\$130,435.00 plus tax of \$8,218.00</u>	<u>\$138,653.00</u>

Excludes: permits, bonding, compaction test, Engineering, inspections, Over-Excavating, Staking, NPPO, Boulders or Boulder Placement, re-install of any chain-link fence between the two parcels Drainage issue or water run off control, storm drain issues, storm water run-off, additional water run-off or and all items not specifically mentioned on this bid/quote.

EXHIBIT J

EXHIBIT J



**PIMA COUNTY DEPARTMENT OF:
REAL PROPERTY SERVICES**

PROJECT: Exchange Agreement

**PARTIES: DFA, L.L.C., a Nevada limited
liability company**

FUNDING: N/A

EXCHANGE AGREEMENT

1. **Parties; Effective Date.** This Exchange Agreement (the "**Agreement**") is between DFA, L.L.C., a Nevada limited liability company, ("**DFA**"), and PIMA COUNTY, a political subdivision of the State of Arizona ("**County**"). This Agreement will become effective on the date when all the parties have signed it (the "Effective Date"). The County is deemed to have signed the Agreement on the date the Chair of the Pima County Board of Supervisors signed it.

2. Background and Purpose.

2.1.1. County owns the three parcels of property legally described and depicted on **Exhibit A**. For purposes of calculating exchange and boot under Section 3 of this Agreement, the property legally described and depicted on **Exhibit A** has also been separately described and depicted on **Exhibit A1** ("**Exchange Parcel**"), **Exhibit A2** ("**Boot Parcel #1**") and **Exhibit A3** ("**Boot Parcel #2**"). The Exchange Parcel, Boot Parcel #1 and Boot Parcel #2 are collectively referred to as the "**County Property**".

2.1.2. DFA owns a parcel of real property in Pima County, Arizona, legally described and depicted on **Exhibit B** (the "**Exchange Property**"). A portion of the Exchange Property is the subject of an eminent domain action filed by County against DFA under case no. C 2011-2935 in the Arizona Superior Court, Pima County (the "**Court Action**").

2.1.3. In settlement of the Court Action, County and DFA shall exchange the County Property and the Exchange Property under the terms and conditions of this Agreement, the material terms of which will be incorporated into a final judgment in the Court Action.

3. **Exchange and Boot.** DFA shall convey the Exchange Property to County at Closing (as such term is defined in Section 11 herein), and in exchange County shall convey to DFA the County Property. The parties agree that the size and value of the County Property exceeds the size and value of the Exchange Property, and therefore in addition to receiving the County Property, DFA shall pay to County the amount of ONE HUNDRED SEVENTY-THREE THOUSAND SEVEN HUNDRED TWENTY-SEVEN AND 25/100 DOLLARS (\$173,727.25) at Closing, calculated as follows: (i) 23,304 square feet at \$3.00 per square foot, or SIXTY-NINE THOUSAND NINE HUNDRED TWELVE AND 00/100 DOLLARS (\$69,912), plus (ii) 26,965 square feet at \$3.85 per square foot, or ONE HUNDRED THREE THOUSAND EIGHT HUNDRED FIFTEEN AND 25/100 DOLLARS (\$103,815.25), for a total of ONE HUNDRED SEVENTY-THREE THOUSAND SEVEN HUNDRED TWENTY-SEVEN AND 25/100 DOLLARS (\$173,727.25).

4. **Easements for Well Monitoring.**

4.1 Easement for Removal of Existing Pima County Facility. The parties acknowledge that a Pima County Department of Environmental Quality (PDEQ) facility ("**Existing Facility**") currently exists on the County Property at the location depicted on **Exhibit C**. PDEQ has determined that the Existing Facility is no longer necessary for its purposes, and intends to remove the Existing Facility. County shall retain, and DFA shall take the County Property subject to, a temporary, exclusive blanket easement in favor of County, in, over, and across the the County Property ("**Removal Easement**"), for access to, and removal of, the Existing Facility. The Removal Easement shall terminate automatically upon County's completing the removal of the Existing Facility and related equipment. County agrees to leave the extinguished Existing Facility and surrounding area in reasonable condition.

4.2. Easements for New Facility. County recently installed a new PDEQ facility on the County Property ("**New Facility**"), in approximately the location depicted on **Exhibit D**. County shall retain, and DFA shall take the County Property subject to a temporary, blanket, non-exclusive easement in favor of County, in, over, under, and across the County Property, for the purpose of completing construction activities associated with the New Facility and, until the Frontage Road Access is perfected under Section 5, access to, and operation and maintenance of, the New Facility. Additionally, DFA agrees to grant to County, upon completion of the New Facility, a permanent, non-exclusive easement over a portion of the County Property in favor of County and its agents, for the purposes of accessing, operating, and maintaining the New Facility ("**New Facility Easement**"), The parties acknowledge that the precise location and description of the New Facility Easement is presently not defined, and the parties agree to cooperate in good faith, upon construction of the New Facility, to determine the precise location and description of the New Facility Easement consistent with County's need for reasonable access to and sufficient area around the New Facility to operate and maintain it. At a minimum, the New Facility Easement shall include an access drive, of a minimum width of twenty feet, for ingress and egress to and from the New Facility, along with a work area including and surrounding the New Facility with the following minimum dimensions: from the edge of the New Facility that parallels the frontage road right-of-way line, to that right-of-way line; and, from each of the other three edges of the New Facility, thirty feet. County shall have the sole right and responsibility to operate and maintain the New Facility. If, in County's sole discretion, County should determine in the future that it no longer needs the New Facility, County agrees, at its cost, to abandon the New Facility and extinguish the easement, whereupon the County shall remove the New Facility and related equipment leaving the extinguished New Facility Easement in reasonable condition.

4.3. Modification of New Facility Easement. County agrees that, if DFA, at its sole cost, obtains all necessary permits and approvals from the Arizona Department of Transportation and City of Tucson allowing County sufficient access to the New Facility directly from the existing frontage road, to allow the New Facility Easement area to be reduced to that area reasonably necessary to allow County to access the New Facility directly from the existing frontage road and to operate and maintain the New Facility.

Landlord will be in default only if it fails to initiate the cure within thirty (30) days, and thereafter diligently pursue the same to completion.

13.3. Remedies.

13.3.1. All Remedies Available. Either party may pursue any remedies provided by law and in equity for the breach of this Lease, including termination of the Lease. No right or remedy is intended to be exclusive of any other right or remedy and each will be cumulative and in addition to any other.

13.3.2. Cure by Landlord. Should Tenant fail to perform in a timely manner any of the covenants or terms of this Lease on its part to be performed, Landlord may (but is not obligated to) perform the same and charge Tenant for the costs thereof, together with interest thereon, at the greater of (i) ten percent (10%) per annum, or (ii) the rate set by statute for interest on judgments, from the date upon which the expense is incurred until paid by Tenant.

14. **NOTICES.** All notices given under this Lease must be in writing and either served personally or sent by certified or registered mail, return receipt requested, to the parties as indicated below or to such other persons, or addressees as either party may designate in writing to the other party:

If to Tenant: Mountain View Tours
P.O. Box 91890
Tucson, AZ 85752-1890

If to Landlord: Clerk of the Board of Supervisors
Pima County
130 West Congress
Tucson, AZ 85701

With a copy to: Manager, Pima County Real Property Services
201 N Stone Ave, 6th Floor
Tucson, AZ 85701

15. **ASSIGNMENT/SUBLETTING.** Tenant may not, either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and may not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or allow any other person (the employees, agents, servants and invitees of Tenant excepted) to occupy or use the Premises, or any portion thereof, without first obtaining the written consent of Landlord.

5. **Diamond Street Access Easement.**

5.1. Retained Access Easement. County shall retain, and DFA shall take the County Property subject to, a blanket, non-exclusive easement for ingress and egress over the entire County Property from Diamond Street in favor of County and its lessees and licensees, for the benefit of County's remaining property adjacent to the County Property (the "**Access Easement**").

5.2. Termination of Access Easement. The Access Easement shall remain in effect until such time as the following are satisfied (the "**Termination Requirements**"):

5.2.1. DFA obtains approval from the Arizona Department of Transportation and the City of Tucson for a permanent access point ("**Frontage Road Access**") from the existing frontage road for Interstate 10 in the vicinity of the northern boundary of the County Property as depicted on Exhibit E; and

5.2.2. County has reviewed and approved final plans for the construction of the Frontage Road Access and the Access Drive (defined below), which approval shall not be unreasonably withheld; and

5.2.3. DFA constructs the Frontage Road Access, together with a paved, permanent access road to the County Property from the Frontage Road Access (the "**Access Drive**") at DFA's sole cost, in accordance with the requirements of the Arizona Department of Transportation and the City of Tucson (the "**Access Easement Termination Requirements**"), subject to the County contribution of Ten Thousand Dollars (\$10,000.00) outlined in Section 5.5 below. DFA shall obtain all necessary permits and approvals for the construction of the Frontage Road Access.

5.3. Termination Notice. The Access Easement shall automatically and without action, notice, demand or any other occurrence terminate upon DFA's written confirmation of the fulfillment of the Access Easement Termination Requirements ("**DFA's Notice of Performance**"), provided that DFA's Notice of Performance shall contain a permit evidencing approval of final inspection of the Frontage Road Access and Access Drive.

5.4. Approval of Frontage Road Access. Pima County understands and agrees that both the Frontage Road Access, and the Access Drive, may be established and constructed on the County's remaining land fronting the I-10

Frontage Road adjacent to the County's Property as depicted on **Exhibit A1**. County agrees to cooperate, and to cause its employees to cooperate, with DFA in connection with DFA's endeavors to obtain approval of the Frontage Road Access and the Access Drive. The parties also agree to record appropriate documents to effect establishment of the Frontage Road Access and Access Drive and termination of the Access Easement.

5.5. Deferred Payment. Within sixty (60) days after County's receipt of DFA's Notice of Performance, County shall pay DFA the sum of Ten Thousand Dollars (\$10,000.00) (the "**Deferred Payment**") to partially defray the cost of the Frontage Road Access and Permanent Road. At Closing, County shall segregate the Deferred Payment from the proceeds in a special revenue account for payment to DFA pursuant to this Section 5.5. In the event that the Frontage Road Access is not approved and constructed within five (5) years of the Effective Date, the financial obligation of County to DFA pursuant to this Section 5.5 shall cease.

5.6. Cooperation of Parties. The parties acknowledge that exact location of the Frontage Road Access has yet to be determined, and may necessitate the granting of an additional access easement from County to DFA or from DFA to County in order to construct the Access Drive. Each party agrees to grant the other party any reasonably necessary access across its respective property of a width of forty (40) feet at a location to be determined in order to facilitate the construction of the Frontage Road Access. It is the specific intent of this Section 5.6 that both DFA and County will be entitled to access their respective properties from the Frontage Road Access if granted, and the parties will take whatever steps are necessary to grant necessary access across their respective properties to accomplish this intent. This obligation shall be binding upon the heirs, successors and assigns of both DFA and County and shall be recorded and run with the County Property and the County's remainder property.

6. **Vacant Land**. The parties acknowledge that the Exchange Property and the County Property are vacant land and that no personal property is being transferred.

7. **Inspection Rights**.

7.1. Upon execution of this Agreement and until Closing, DFA hereby grants permission to County, County's representatives, and County's authorized agents to enter the Exchange Property for due diligence, including for land survey, biological and cultural survey, and environmental assessment. Upon execution of

this Agreement until Closing, County hereby grants permission to DFA, DFA's representatives, and DFA's authorized agents to enter the County Property for due diligence, including for land survey, biological and cultural survey, and environmental assessment.

7.2. Each party shall permit the other party to conduct such inspections of the others' property as deemed necessary to determine the environmental condition of the property. If the investigations reveal the presence of contamination or the need to conduct environmental cleanup, each party shall conduct a cleanup of its property adequate to bring the property into compliance with applicable law prior to Closing or the other party may terminate this Agreement, provided, however, that the Plume, as defined in Section 12.1 of this Agreement, shall not be a basis for requiring a cleanup or for termination of this Agreement.

8. Escrow and Title.

8.1. Proration and Closing Costs. Taxes on the Exchange Property and the County Property shall be prorated as of the date of Closing. Expenses incidental to transfer of title, including preparation of legal descriptions, title reports, recording fees, escrow fees, and releases, for both the County Property and the Exchange Property, shall be paid 100% by County.

8.2. Escrow and Title Agent. The Title Company and Escrow Agent shall be Title Security Agency, L.L.C., 6640 North Oracle Road, #120, Tucson, Arizona 85704, 520-219-6451 ("**Title Company**"), Rhonda Herrera ("**Escrow Agent**") and this Agreement shall be used as escrow instructions in connection with the escrow established with Escrow Agent under this Agreement (the "**Escrow**"). Escrow Agent shall make reasonably suitable arrangements with County, upon County's request, to have County execute all of the documents to be executed by County as provided in this Agreement at the office of Escrow Agent that is located the closest to the office of County.

8.3. Title Commitment.

8.3.1. *Commitment.* Escrow Agent will distribute to County a Commitment for Standard Owner's Title Insurance on the Exchange Property (the "**Commitment**") together with complete and legible copies of all documents which will remain as exceptions to County's policy of title insurance. Escrow Agent will distribute to DFA a Commitment for Standard Owner's Title Insurance

on the County Property together with complete and legible copies of all documents which will remain as exceptions to DFA's policy of title insurance.

8.3.2. *Permitted Exceptions.*

8.3.2.1. DFA shall deliver title to the Exchange Property at Closing subject to all matters of record, but the Closing shall be contingent upon County being insured pursuant to the Commitment and subject only to the exceptions listed on **Exhibit F** hereto (the "**Permitted Exceptions to Exchange Property**"), and the title policy shall be in the amount chosen by County prior to Closing.

8.3.2.2. County shall deliver title to the County Property at Closing subject to all matters of record, but the Closing shall be contingent upon DFA being insured pursuant to the Commitment and subject only to the exceptions listed on **Exhibit G** hereto (the "**Permitted Exceptions to County Property**"), and the title policy shall be in an amount as chosen by DFA prior to closing.

8.3.2.3. Each conveyance of the County Property and the Exchange Property shall be by Special Warranty Deed subject to (a) the liens of real estate taxes, water, rent and sewer charges that are not yet due and payable; (b) all matters of record; and (c) all matters a survey or inspection of each property would reveal. The Closing of this transaction shall be contingent upon the Title Company insuring title to County subject only to the Permitted Exceptions to the Exchange Property, and insuring title to DFA subject only to the Permitted Exceptions to the County Property.

8.3.3. *Amended Commitment.* In the event Title Company should issue an Amended Commitment for Title Insurance to one of the parties which discloses one or more exception(s) not previously disclosed ("**Undisclosed Exception(s)**"), that party shall have fifteen (15) days after the receipt of the Amended Commitment for Title Insurance and the Undisclosed Exception(s) (the "**Disapproval Period**") within which to notify the other party and the Escrow Agent in writing of its disapproval of one or more of the Undisclosed Exceptions (the "**Disapproval Notice**"). In the event of such disapproval, the party receiving the Disapproval Notice shall have 10 days from receipt of the Disapproval Notice in which to notify the disapproving party in writing whether it intends to eliminate each of the disapproved Undisclosed Exceptions prior to the Closing (the "**Elimination Period**"). If the party receiving the Disapproval Notice fails to notify the disapproving party of its intent with respect to the disapproved

Undisclosed Exceptions within the Elimination Period or if it elects not to cure all disapproved Undisclosed Exceptions, the disapproving party may terminate this Agreement and the Escrow shall be canceled. If the Amended Commitment for Title Insurance is issued less than 15 days prior to the date of the Closing, then the date of the Closing shall be deemed to be extended until the end of the Disapproval Period and the Elimination Period, if applicable; provided however, that Closing must occur as provided in Section 11.

9. Security Interest. Prior to Closing, each party shall obtain from any lienholders releases of (i) all nonconsensual liens, including but not limited to tax liens, mechanics liens, and judgment liens, and (ii) all consensual liens, including but not limited to mortgages, deeds of trusts, and contracts for sale, as required for the fee transfer of the County Property and Exchange Property, free and clear of all liens and encumbrances in accordance with the terms hereof.

10. Closing Documents.

10.1. County shall execute and deliver to Escrow Agent a special warranty deed conveying title to the County Property to DFA. The County Property shall be legally described and depicted as in **Exhibit A**.

10.2. DFA shall execute and deliver to Escrow Agent a special warranty deed conveying title to the Exchange Property to County.

11. Closing Date. Closing pursuant to this Agreement ("**Closing**") shall take place on or before May 29, 2015 ("**Closing Deadline**"). Each party shall deliver possession on the date of Closing.

12. Representations.

12.1. Each party acknowledges that there is a contaminated plume in the vicinity of the County Property and the Exchange Property (the "**Plume**"). Each party represents that, except to the extent caused by or related to the Plume, to the best of its knowledge (i) no pollutants, contaminants, toxic or hazardous substances, wastes or materials have been stored, used, or are located on its property or within any surface or subsurface waters thereof; (ii) no underground tanks have been located on its property; (iii) its property is in compliance with all federal, state, and local environmental laws, regulations, and ordinances; and (iv) no legal action of any kind has been commenced or threatened with respect to its property.

12.2. Subject only to the representations of the parties in this Section 12 and Section 18, each party acknowledges that neither party has made any representations or warranties of any nature to the other, and the property interests acquired by each party are acquired "AS IS" and "WHERE IS," with all faults and limitations, and all defects, latent or otherwise. Each party who is the grantee of the interests subject to this Agreement further represents to the other that it has fully and completely examined the property, conducted inspections thereof, including environmental assessments to the extent such grantee has felt necessary or advisable, and releases the other party from any and all liability, obligation or responsibility in any way relating to the condition of the land. This release survives Closing. Notwithstanding the representations and disclaimers of this Section 12, County shall hold DFA harmless from any existing contamination on the County Property as of the date of Closing.

13. Effect on Court Action. The parties acknowledge that the Court Action is pending as of the Effective Date of this Agreement. The parties agree to request that the Court dismiss the Court Action, with each side to bear its own costs and fees. The parties further agree that, should either party be unable to close, in addition to any other remedy at law, County may pursue acquisition by eminent domain of the same property interests and for the same purposes sought in the Court Action by filing a new eminent domain action ("Future Proceeding"). DFA agrees that neither this Agreement, nor any dismissal resulting from this Agreement, constitutes an abandonment of the Court Action or otherwise affects any Future Proceeding. County agrees that, by entering this Agreement, DFA does not waive its right in any Future Proceeding to challenge County's authority to acquire the property interests sought by eminent domain, nor to seek just compensation for any property interests acquired by eminent domain.

14. No Leases. Each party represents that except a holdover tenancy under the terms disclosed on Exhibit H, there are no oral or written leases, rental agreements, licenses, permits, or any other agreements permitting a third party to use or occupy all or any portion of its property. The parties acknowledge that County anticipates entering into a lease agreement in substantially the form attached as Exhibit I and that such lease agreement may be executed by closing.

15. No Broker's Commissions. The parties acknowledge that no broker or finder has been used for this transaction. Each party shall indemnify and hold harmless the other against fees, costs, and expenses of defending against such claims made by any one claiming to have been engaged for this transaction.

16. **No Sale.** Neither party shall sell or encumber its property before Closing.

17. **Notices.**

17.1. Form. All notices hereunder shall be in writing and delivered by first class mail, certified mail return receipt requested, delivery/courier service or electronic transmission (for instance, e-mail to the e-mail addresses indicated below).

17.2. Receipt. Such notices and other communications shall be deemed to be given and received as follows: (a) upon actual receipt, if delivered personally; (b) upon actual receipt, if transmitted by e-mail on a business day before 5:00 p.m. (Tucson time); (c) upon the next business day following transmission if transmitted by e-mail on a day which is not a business day or if transmitted after 5:00 p.m. (Tucson time) on a business day; (d) the next business day, if delivered by overnight courier; or (e) three days following deposit in the mail, if delivered by first class mail postage prepaid, addressed to that party at his/her/their/its designated address. The designated address of a party shall be the address of that party shown below or such other address within the United States of America that any party from time to time may specify by written notice to the other parties at least 15 days prior to the effective date of such change, but no such notice of change shall be effective unless and until received by the other parties.

17.3. Rejection. Rejection or refusal to accept notice, or inability to deliver notice because of changed address or because no notice of changed address is given, shall be deemed to be receipt of any such notice as of the date of rejection or attempted delivery.

17.4. Notice to Entity. Any notice to an entity shall be deemed to be given on the date specified in this Section 17 without regard to when such notice is delivered by the entity to the individual to whose attention it is directed and without regard to the fact that proper delivery may be refused by someone other than the individual to whose attention it is directed. If a notice is received by an entity, the fact that the individual to whose attention it is directed is no longer at such address or associated with such entity shall not affect the effectiveness of such notice.

17.5. Addresses. County and DFA agree that any notice sent to the address set forth below shall serve as notice by County or DFA, as the case may be, to the other:

If to County:

Neil J. Konigsberg, Manager
Pima County Real Property Services
201 N Stone Ave, 6th Floor
Tucson, AZ 85701-1207
Telephone: 520.740.6313
E-mail: neil.konigsberg@pima.gov

with a copy to:

Andrew L. Flagg, Deputy County Attorney
Pima County Attorney's Office, Civil Division
32 N Stone Ave, Suite 2100
Tucson, AZ 85701-1412
Telephone: 520.740.5750
E-mail: andrew.flagg@pcao.pima.gov

If to DFA:

DFA, LLC
Attn: Legal Department
1401 Mineral Avenue
Las Vegas, NV 89106
Telephone: (702) 362-0623
E-mail: legal@ahern.com

with a copy to:

Thomas M. Parsons, Esq.
Stubbs & Schubart, P.C.
340 N. Main Ave,
Tucson, AZ 85701
Telephone: (520) 623-5466
E-mail: TParsons@StubbsSchubart.com

18. **Conflict of Interest.** This Agreement is subject to cancellation within three 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 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. County represents and warrants to DFA, and DFA warrants to County, that to the best of their knowledge, no person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of County is, as of the Effective Date, an employee or agent of DFA with respect to the subject matter of this Agreement.

19. Survival of Representation and Warranties. All representations and warranties contained herein survive the Closing for ten years.

20. Entire Agreement. This signed document constitutes the entire agreement between the parties, and no modification or amendment to this Agreement will be binding unless in writing and signed by both parties.

21. Remedies. If either party defaults under this Agreement, the other party may pursue all rights and remedies available at law or in equity.

22. Exhibits. The following Exhibits to this Agreement are fully incorporated herein as if set forth at length. To the extent that any Exhibits to this Agreement or to any of the Exhibits hereto are not available at the execution hereof, they shall be added by the Parties prior to Closing and shall be in form and substance reasonably satisfactory to both parties.

Exhibit A	Legal Description and Depiction of County Property
<u>Exhibit A1</u>	Legal Description and Depiction of Exchange Parcel
<u>Exhibit A2</u>	Legal Description and Depiction of Boot Parcel #1
<u>Exhibit A3</u>	Legal Description and Depiction of Boot Parcel #2
<u>Exhibit B</u>	Legal Description and Depiction of Exchange Property
<u>Exhibit C</u>	Depiction of Existing Facility Location
<u>Exhibit D</u>	Approximate Location of New Facility
Exhibit E	Depiction of Frontage Road Access
Exhibit F	Permitted Exceptions to Exchange Property
<u>Exhibit G</u>	Permitted Exceptions to County Property
<u>Exhibits H, I</u>	Leases or Third Party Agreements

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

Each party is signing this Agreement on the date stated opposite that Party's signature.

DFA, L.L.C. a Nevada limited liability company:


Signature

3/25/15
Date

Don F. Ahern
Print Name

Manager


Its

COUNTY: PIMA COUNTY, a political subdivision of the State of Arizona:


Chair, Board of Supervisors

APR 21 2015
Date

ATTEST:


Robin Brigode, Clerk of Board

APR 21 2015
Date

APPROVED AS TO CONTENT:


for Neil J. Konigsberg, Manager, Real Property Services


John Bernal, Deputy County Administrator, Public Works

APPROVED AS TO FORM:



Andrew L. Flagg, Deputy County Attorney

Exhibit A

30 January 2015

**EXHIBIT
LEGAL DESCRIPTION**

All that portion of that parcel as described in Docket 9898 at Page 750, recorded in the office of the County Recorder, Pima County, Arizona, being located in the Southeast Quarter of Section 17, Township 13 South, Range 13 East, Gila & Salt River Meridian, Pima County, Arizona, more particularly described as follows:

COMMENCING at the northwest corner of said southeast one quarter;

THENCE along the west line of said southeast one quarter South $00^{\circ}44'26''$ West a distance of 1,049.84 feet to the southwest corner of said parcel;

THENCE along the south line of said parcel North $89^{\circ}53'55''$ East a distance of 558.90 feet to an angle point in said south line, said point being the **POINT OF BEGINNING**;

THENCE North $35^{\circ}21'05''$ West a distance of 105.00 feet;

THENCE North $54^{\circ}38'55''$ East a distance of 256.81 feet to a point on the west right of way line of Interstate 10 as defined in Docket 11666 at Page 8680;

THENCE along said west right of way line South $35^{\circ}21'05''$ East a distance of 552.75 feet;

THENCE continuing along said west right of way line South $34^{\circ}51'16''$ East a distance of 29.99 feet to a point on the south line of said parcel described in Docket 9898 at Page 750;

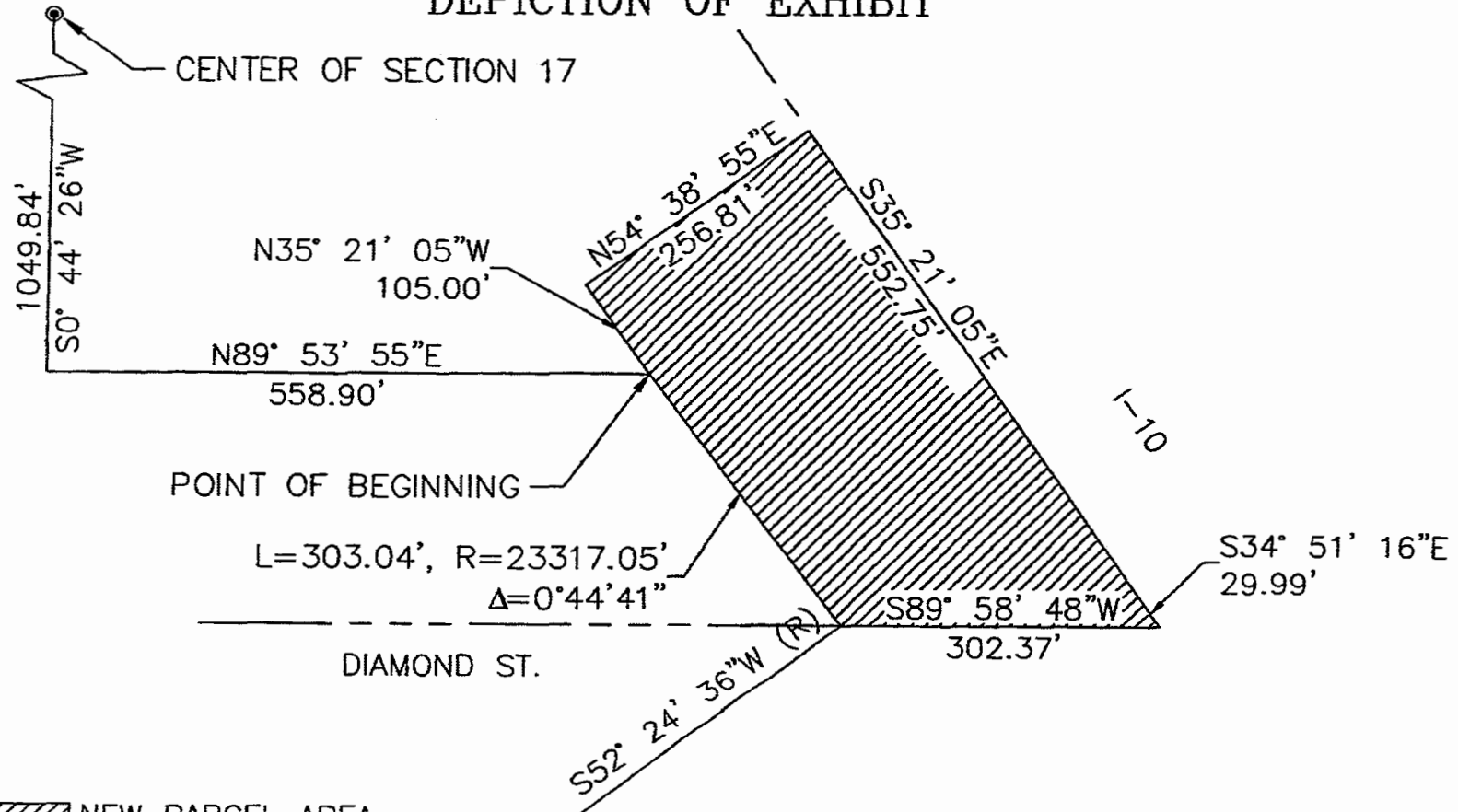
THENCE along said south line South $89^{\circ}58'48''$ West a distance of 302.37 feet to an angle point in said south line being the beginning of a curve concave to the northeast, having a radius of 23,317.05 feet and to which a radial line bears South $52^{\circ}24'36''$ West;

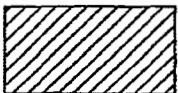
THENCE along the southwesterly line of said parcel and curve to the right through a central angle of $00^{\circ}44'41''$ a distance of 303.04 feet to the **POINT OF BEGINNING**.



Expires 31 March 2015

DEPICTION OF EXHIBIT



 NEW PARCEL AREA
= 2.869 ACRES +/-



PIMA COUNTY SURVEY

A PORTION OF PARCEL DESCRIBED IN DOCKET 9898, PAGE 750
LOCATED IN SECTIONS 17, TOWNSHIP 13 SOUTH, RANGE 13 EAST, GILA
AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

Scale: 1" = 150'

Date: 2 February 2015

Drawn By: AJI

Sheet 1 of 1

Exhibit A1

16 May 2014

EXHIBIT "A1"
LEGAL DESCRIPTION

All that portion of that parcel as described in Docket 9898 at Page 750, recorded in the office of the County Recorder, Pima County, Arizona, being located in the Southeast Quarter of Section 17, Township 13 South, Range 13 East, Gila & Salt River Meridian, Pima County, Arizona, more particularly described as follows:

COMMENCING at the northwest corner of said southeast one quarter;

THENCE along the west line of said southeast one quarter South 00°44'26" West a distance of 1,049.84 feet to the southwest corner of said parcel;

THENCE along the south line of said parcel North 89°53'55" East to an angle point in said south line, said point being the **POINT OF BEGINNING**;

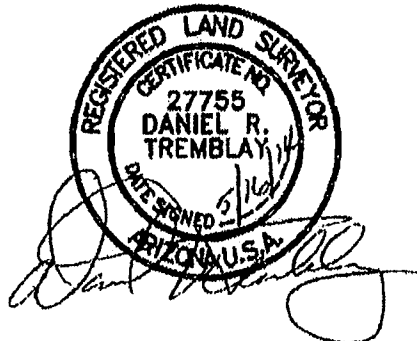
THENCE continuing North 89°53'55" East a distance of 314.47 feet to a point on the west right of way line of Interstate 10 as defined in Docket 11666 at Page 8680;

THENCE along said west right of way line South 35°21'05" East a distance of 266.25 feet;

THENCE continuing along said west right of way line South 34°51'16" East a distance of 29.99 feet to a point on the south line of said parcel described in Docket 9898 at Page 750;

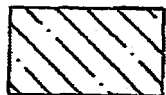
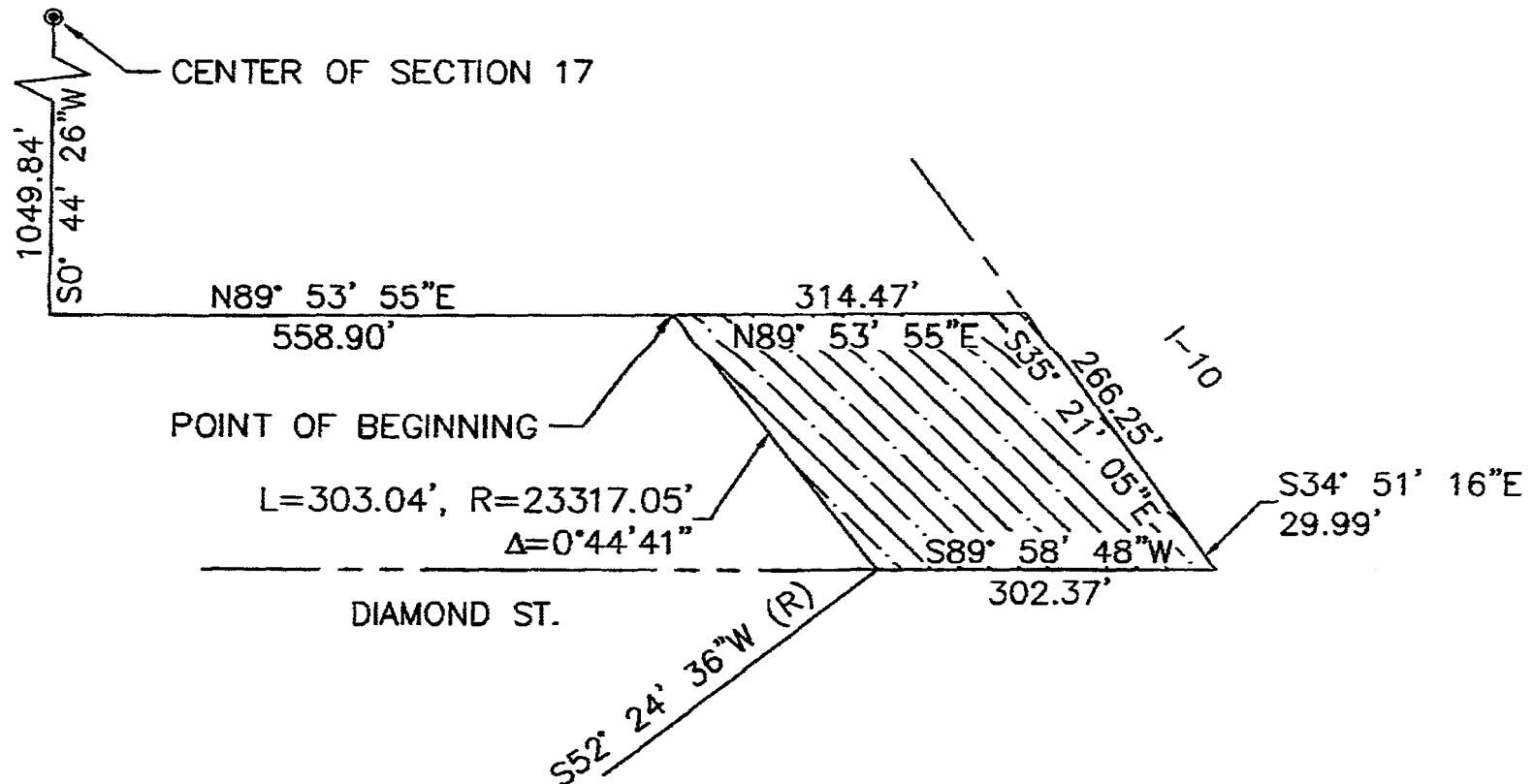
THENCE along said south line South 89°58'48" West a distance of 302.37 feet to an angle point in said south line being the beginning of a curve concave to the northeast, having a radius of 23,317.05 feet and to which a radial line bears South 52°24'36" West;

THENCE along the southwesterly line of said parcel and curve to the right through a central angle of 00°44'41" a distance of 303.04 feet to the **POINT OF BEGINNING**.



Expires 31 March 2015

DEPICTION OF EXHIBIT "A1"



NEW PARCEL AREA
= 74,655 S.F. +/-



PIMA COUNTY SURVEY

A PORTION OF PARCEL DESCRIBED IN DOCKET 9898, PAGE 750
LOCATED IN SECTIONS 17, TOWNSHIP 13 SOUTH, RANGE 13 EAST, GILA
AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

Scale: 1" = 150'

Date: 14 May 2014

Drawn By: AJL

Sheet 1 of 1

Exhibit A2

16 May 2014

EXHIBIT "A2"
LEGAL DESCRIPTION

All that portion of that parcel as described in Docket 9898 at Page 750, recorded in the office of the County Recorder, Pima County, Arizona, being located in the Southeast Quarter of Section 17, Township 13 South, Range 13 East, Gila & Salt River Meridian, Pima County, Arizona, more particularly described as follows:

COMMENCING at the northwest corner of said southeast one quarter;

THENCE along the west line of said southeast one quarter South 00°44'26" West a distance of 1,049.84 feet to the southwest corner of said parcel;

THENCE along the south line of said parcel North 89°53'55" East to an angle point in said south line, said point being the **POINT OF BEGINNING**;

THENCE North 54°38'55" East a distance of 256.81 feet to a point on the west right of way line of Interstate 10 as defined in Docket 11666 at Page 8680;

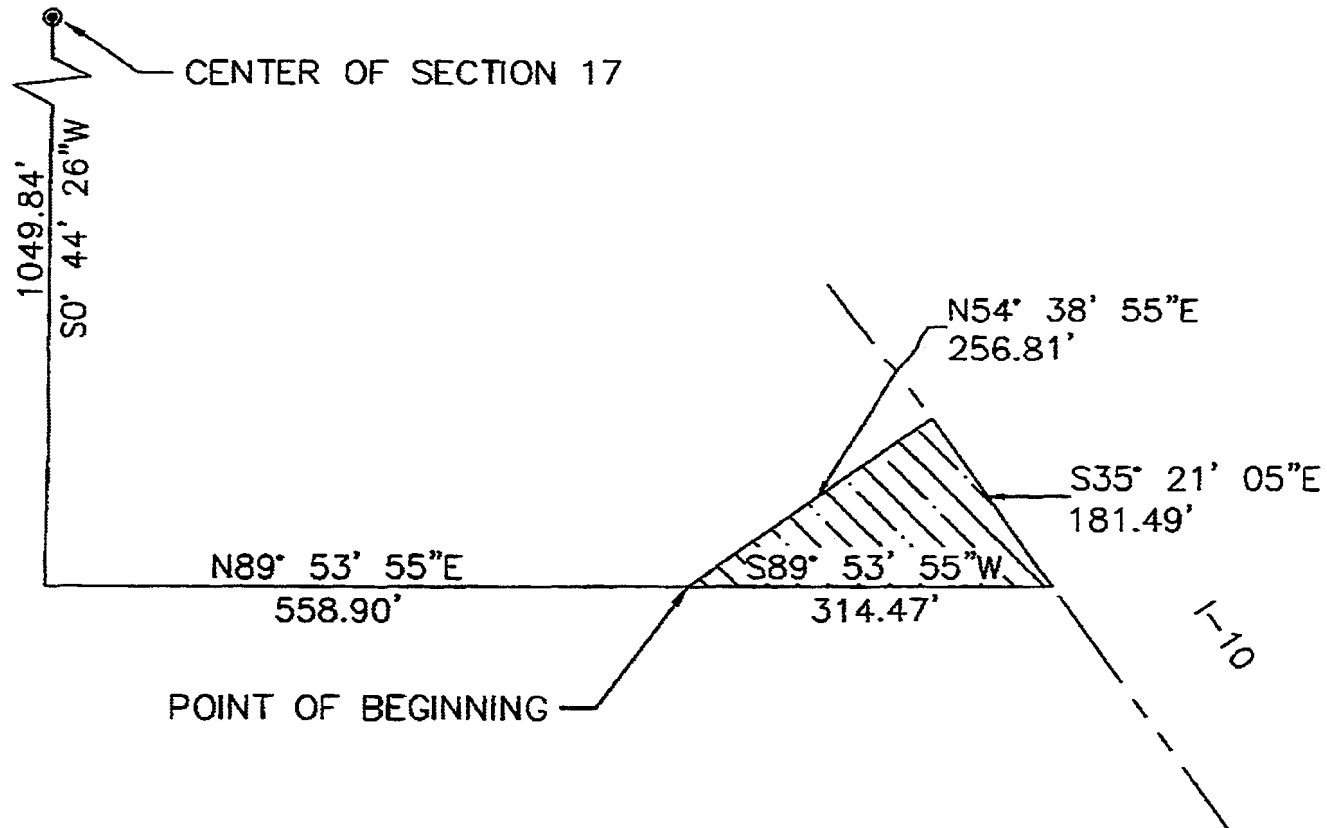
THENCE along said west right of way line South 35°21'05" East a distance of 181.49 feet;

THENCE South 89°53'55" West a distance of 314.47 feet to the **POINT OF BEGINNING**.



Expires 31 March 2015

DEPICTION OF EXHIBIT "A2"



NEW PARCEL AREA
= 23,304 S.F. +/-



PIMA COUNTY SURVEY

A PORTION OF PARCEL DESCRIBED IN DOCKET 9898, PAGE 750
LOCATED IN SECTIONS 17, TOWNSHIP 13 SOUTH, RANGE 13 EAST, GILA
AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

Scale: 1" = 150'

Date: 14 May 2014

Drawn By: AJI

Sheet 1 of 1

Exhibit A3

16 May 2014

EXHIBIT "A3"
LEGAL DESCRIPTION

All that portion of that parcel as described in Docket 9898 at Page 750, recorded in the office of the County Recorder, Pima County, Arizona, being located in the Southeast Quarter of Section 17, Township 13 South, Range 13 East, Gila & Salt River Meridian, Pima County, Arizona, more particularly described as follows:

COMMENCING at the northwest corner of said southeast one quarter;

THENCE along the west line of said southeast one quarter South $00^{\circ}44'26''$ West a distance of 1,049.84 feet to the southwest corner of said parcel;

THENCE along the south line of said parcel North $89^{\circ}53'55''$ East to an angle point in said south line, said point being the **POINT OF BEGINNING**;

THENCE North $35^{\circ}21'05''$ West a distance of 105.00 feet;

THENCE North $54^{\circ}38'55''$ East a distance of 256.81 feet to a point on the west right of way line of Interstate 10 as defined in Docket 11666 at Page 8680;

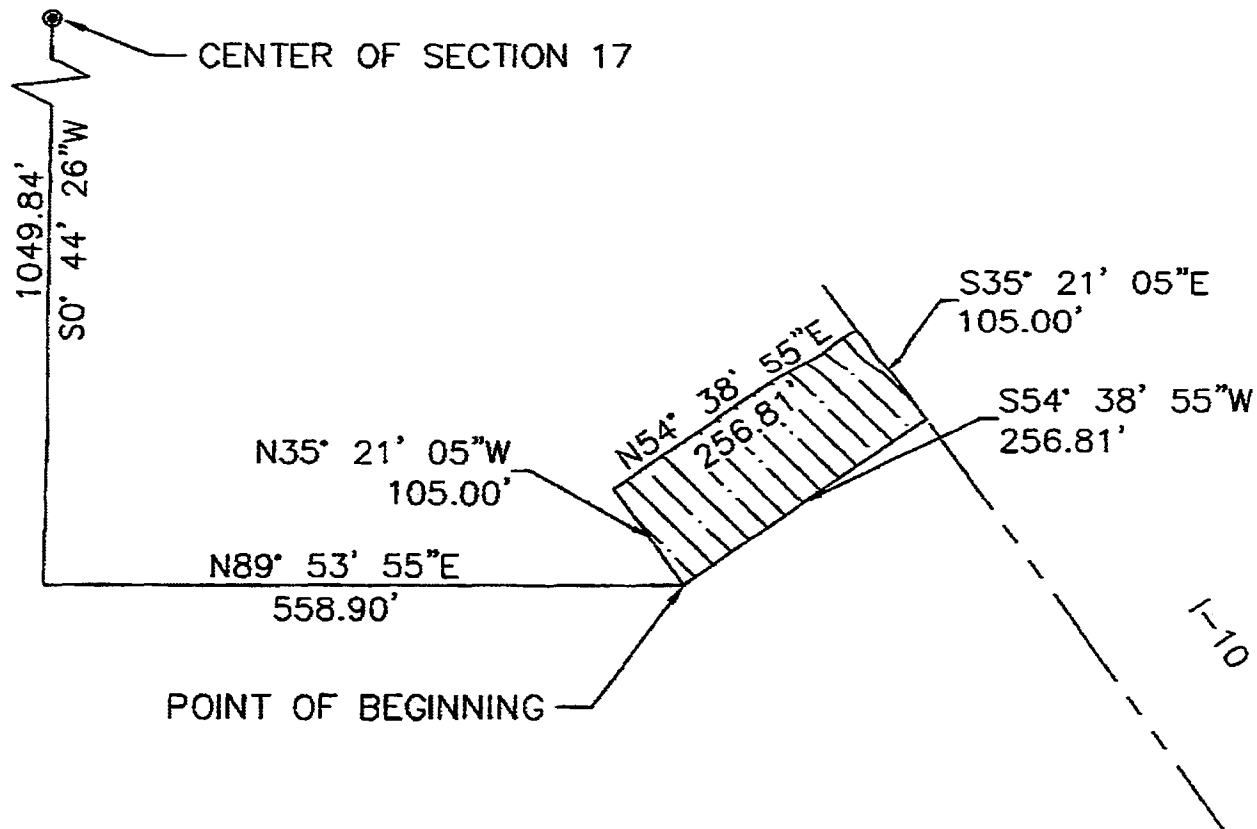
THENCE along said west right of way line South $35^{\circ}21'05''$ East a distance of 105.00 feet;

THENCE South $54^{\circ}38'55''$ West a distance of 256.81 feet to the **POINT OF BEGINNING**.



Expires 31 March 2015

DEPICTION OF EXHIBIT "A3"



NEW PARCEL AREA
= 26,965 S.F. +/-



PIMA COUNTY SURVEY

A PORTION OF PARCEL DESCRIBED IN DOCKET 9898, PAGE 750
LOCATED IN SECTIONS 17, TOWNSHIP 13 SOUTH, RANGE 13 EAST, GILA
AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

Scale: 1" = 150'

Date: 14 May 2014

Drawn By: AJL

Sheet 1 of 1

Exhibit B

Exhibit B – Legal Description of Exchange Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF PIMA,
STATE OF ARIZONA,

AND IS DESCRIBED AS FOLLOWS:

Parcel 1:

That portion of the Northwest Quarter of the Southeast Quarter of Section 17, Township 13 South, Range 13 East, Gila and Salt River Base and Meridian, Pima County, Arizona, particularly bounded as follows:

BEGINNING at a point on the West line of said Southeast Quarter of said Section 17, which point is 156 feet South of the Northwest corner of said Southeast Quarter and is the TRUE PLACE OF BEGINNING;

THENCE Southerly along said West line of said Southeast Quarter, a distance of 200 feet to a point;

THENCE Easterly, parallel to the North line of said Southeast Quarter, a distance of 435.6 feet to a point;

THENCE Northerly parallel to the West line of said Southeast Quarter, a distance of 200 feet to a point;

THENCE Westerly parallel to the said North line of said Southeast Quarter, a distance of 435.6 feet to the said TRUE PLACE OF BEGINNING;

EXCEPTING therefrom all that portion thereof lying within the boundaries of the Tucson-Picacho Highway, Pima County Project FI 94, according to the map thereof filed for record in the office of the County Recorder of Pima County, Arizona, on January 5, 1951 as Instrument No. 504, and the map filed July 26, 1961 as Instrument No. 48414.

jv arb 48

Parcel 2:

The South 6 feet of the North 156 feet of the Northwest Quarter of the Southeast Quarter of Section 17, Township 13 South, Range 13 East, Gila and Salt River Base and Meridian, Pima County, Arizona, lying West of the Tucson-Picacho Highway.

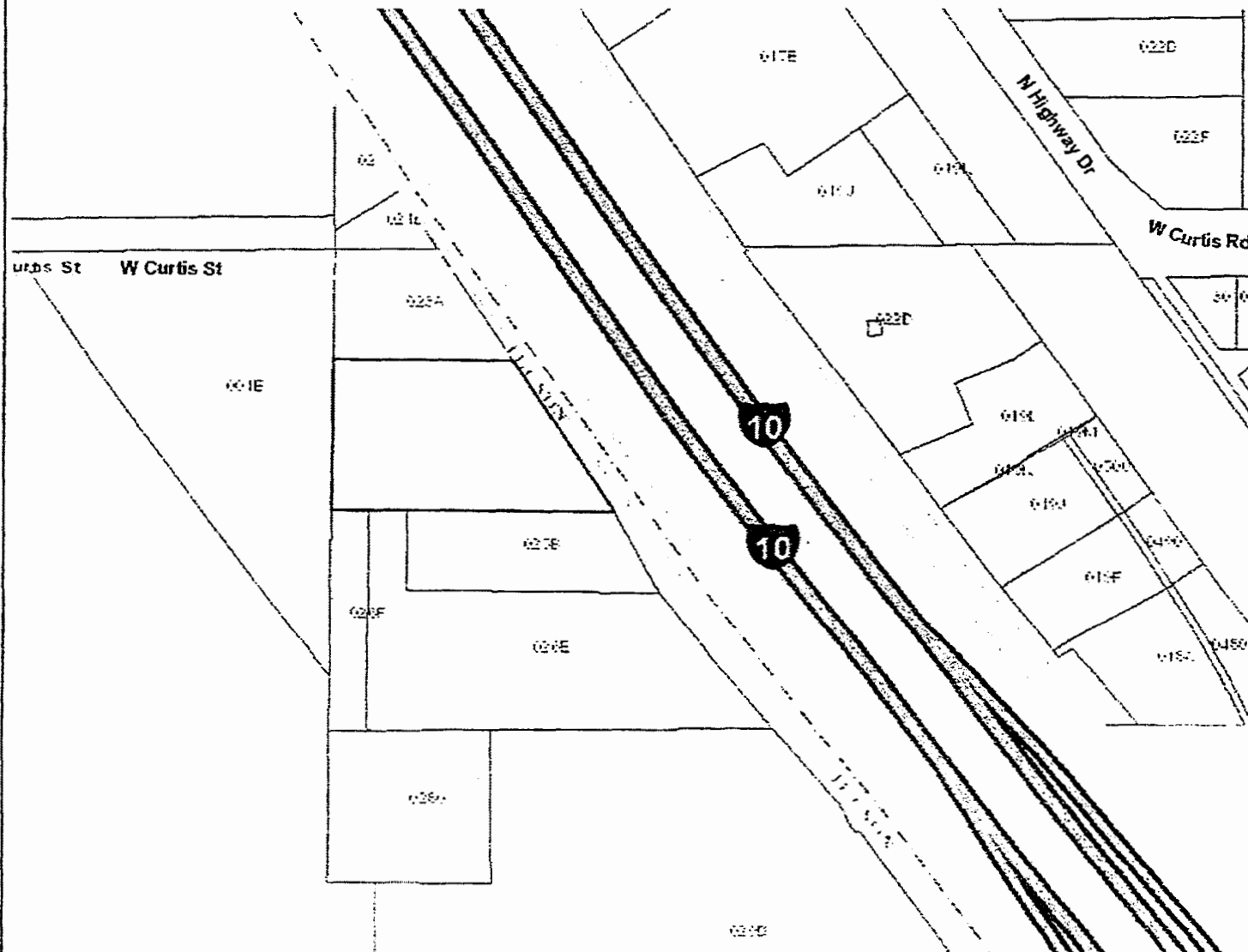
jv arb 188

EXCEPTING FROM PARCELS 1 AND 2 ABOVE, that portion described in the Final Order of Condemnation recorded August 1, 2001 in Docket 11603, Page 557.

Depiction of Exchange Property

Legend

☐ Parcels

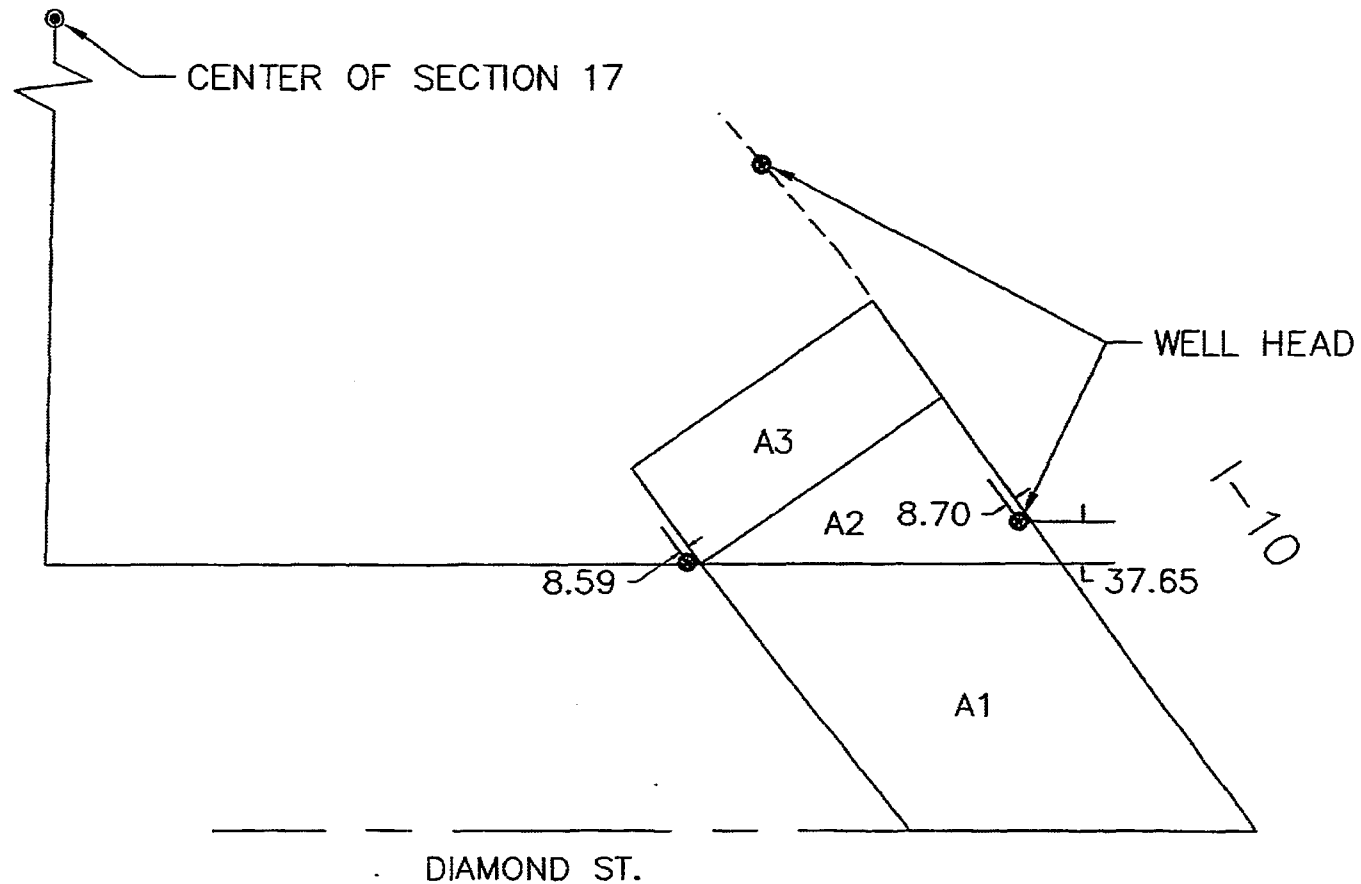


APN 101-20-024B

3/24/2015

Exhibit C

DEPICTION OF WELL HEAD LOCATIONS



PIMA COUNTY SURVEY

A PORTION OF PARCEL DESCRIBED IN DOCKET 9898, PAGE 750
LOCATED IN SECTIONS 17, TOWNSHIP 13 SOUTH, RANGE 13 EAST, GILA
AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

Scale: 1" = 150'

Date: 14 May 2014

Drawn By: AJI

Sheet 1 of 1

Exhibit D

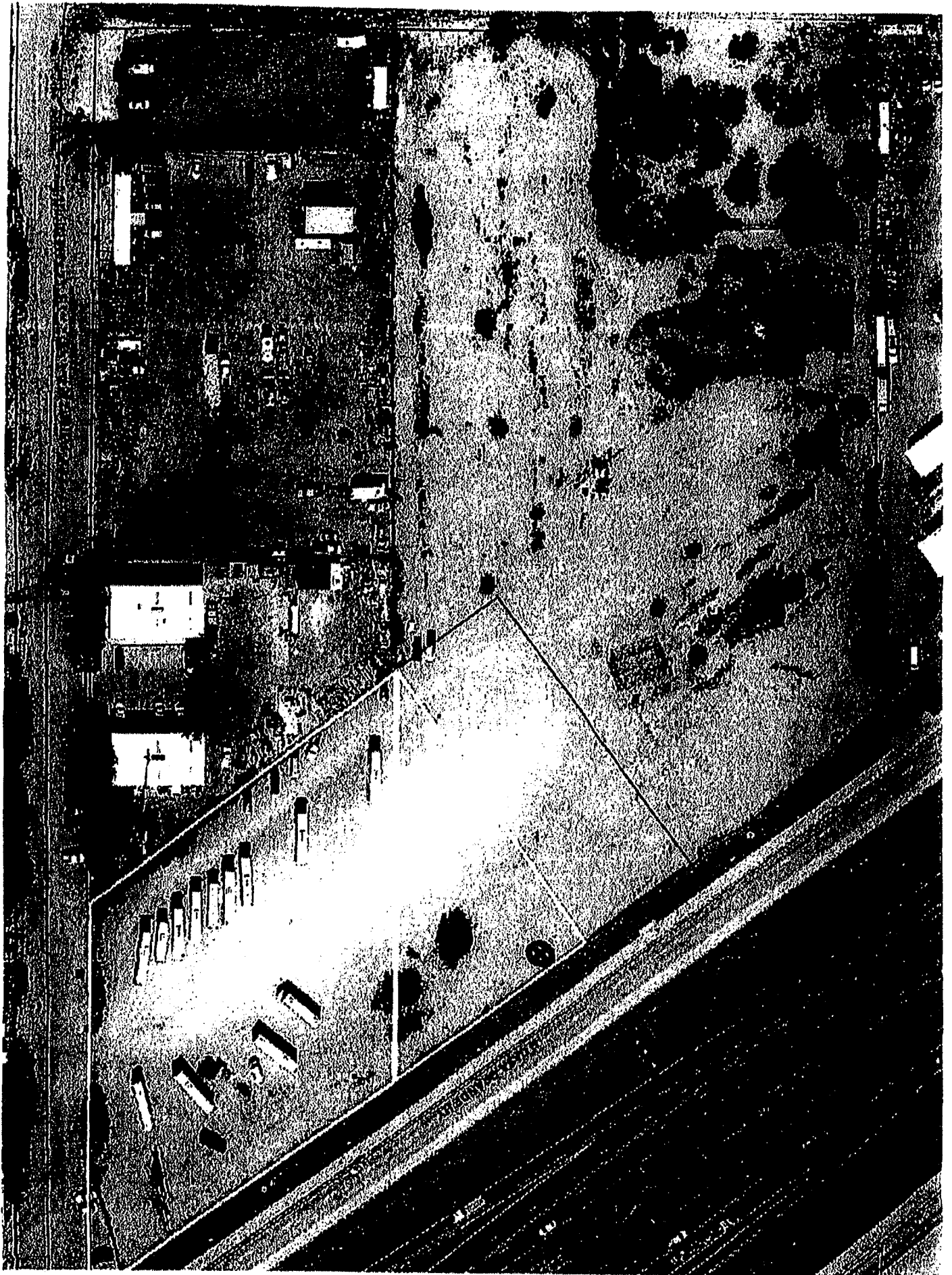
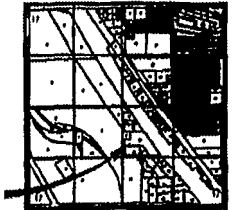


Exhibit E

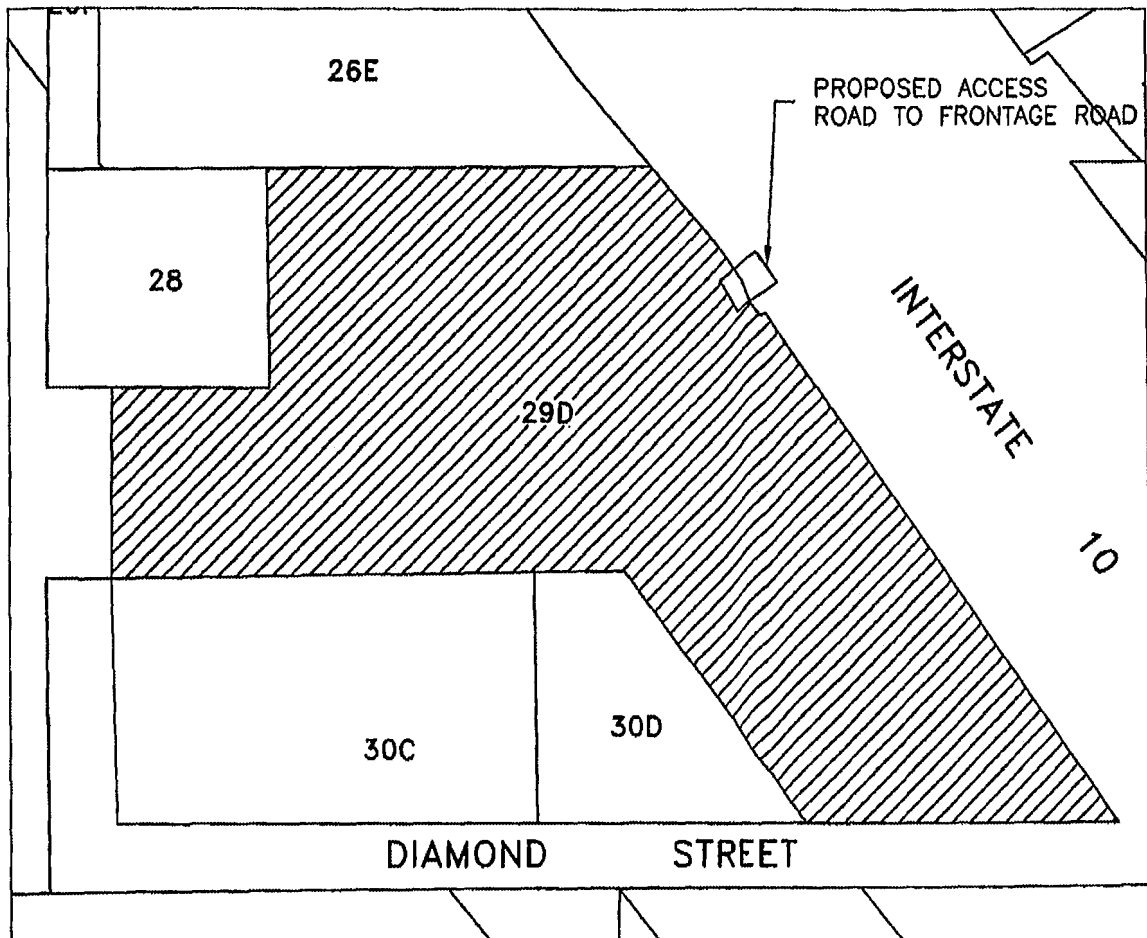
SECTION 17
TOWNSHIP 13 SOUTH
RANGE 13 EAST

SUBJECT AREA



SECTION 17 G&SRM
PIMA COUNTY, ARIZONA

DFA LAND EXCHANGE



PARCEL



101-20-029D



PIMA COUNTY DEPARTMENT OF TRANSPORTATION
ENGINEERING INFORMATION MANAGEMENT

DRAWING NOT TO SCALE

DRAWN BY: BSMITH

DATE: JAN 2015

Exhibit F

SCHEDULE B – SECTION II

EXCEPTIONS

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

- A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
- B. Exceptions and Exclusions from coverage which will appear in the policy or policies to be issued as set forth in Attachment One attached.
- 1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the year 2015.
- 2. Liabilities and obligations imposed upon said Land by its inclusion within any district formed pursuant to Title 48, Arizona Revised Statutes.
- 3. Reservations contained in the Patent

From: The United States of America
Recording Date: February 16, 1943
Recording No: Book 254 of Deeds, page 42

Which among other things recites as follows:

Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of the courts; and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted, as provided by law.

- 4. Water rights, claims or title to water, whether or not disclosed by the public records.
- 5. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: American Telephone and Telegraph Company of Wyoming
Purpose: communication system
Recording Date: August 14, 1946
Recording No: Book 102 of Miscellaneous Records, page 450
Affects: said land more particularly described therein

- 6. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: American Telegraph and Telegraph Company
Purpose: communication system
Recording Date: February 17, 1947
Recording No: Book 107 of Miscellaneous Records, page 492
Affects: said land more particularly described therein

SCHEDULE B – Section II
(Continued)

7. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: American Telegraph and Telegraph Company
Purpose: communication system
Recording Date: February 17, 1947
Recording No: Book 107 of Miscellaneous Records, page 493
Affects: said land more particularly described therein

8. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: ingress and egress
Recording Date: May 6, 1950
Recording No: Docket 248, page 592

9. A resolution in favor of the Board of Supervisors of Pima County

For: abandonment of right of way
Recording Date: December 26, 1974
Recording No: Docket 4921, page 412

10. Matters contained in that certain document

Entitled: Final Order of Condemnation
Recording Date: May 19, 1975
Recording No: Docket 5020, page 76

Reference is hereby made to said document for full particulars.

11. Covenants, conditions, restrictions and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recorded: August 19, 1980 in Docket 6346, page 1091

12. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Pima County
Purpose: ditches, sewer lines, manholes and appurtenances
Recording Date: January 7, 1986
Recording No: Docket 7695, page 632
Affects: said land more particularly described therein

13. A resolution in favor of the Pima County Board of Supervisors


For: water well sites
Recording Date: April 12, 1989
Recording No: Docket 8514, page 1253

SCHEDULE B – Section II
(Continued)

14. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
- | | |
|-----------------|-----------------------------------------------|
| Granted to: | Tucson Electric Power Company |
| Purpose: | electric lines and appurtenant facilities |
| Recording Date: | July 1, 2009 |
| Recording No: | Docket 13591, page 705 |
| Affects: | said land more particularly described therein |
15. Any rights of the parties in possession of a portion of, or all of, said Land, which rights are not disclosed by the Public Records.
16. Matters which may be disclosed by an inspection and/or by a correct ALTA/ACSM Land Title Survey of said Land that is satisfactory to the Company, and/or by inquiry of the parties in possession thereof.

END OF SCHEDULE B – SECTION II

Exhibit G

	First American Title™	Commitment for Title Insurance
		ISSUED BY First American Title Insurance Company
Schedule BII		

File No.: 600-35777-RDH

EXCEPTIONS

The policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Reservations or exceptions in Patents or in Acts authorizing the issuance thereof recorded in Book 264 of Deeds at page 42.
2. TAXES subsequent to the year 2014.
3. 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.
4. EASEMENT and rights incident thereto, as set forth in instrument:
 Recorded in Book 107 of Miscellaneous Records
 Page 496
 Purpose communication facilities and associated matters
5. RESERVATIONS contained in Deed recorded in Docket 3776 at page 614.
6. EASEMENT and rights incident thereto, as set forth in instrument:
 Recorded in Docket 4667
 Page 646
 Purpose sewer lines and associated matters
 And as affected by Release of Sewer Easement recorded in Docket 11342 at page 84
7. RESTRICTIONS, CONDITIONS, COVENANTS, RESERVATIONS, including but not limited to any recitals creating easements, liabilities, obligations or party walls, omitting, if any, from the above, any restrictions based on race, color, religion sex, handicap, familial status or national origin contained in instrument:
 Recorded in Docket 4989
 Page 75
8. EASEMENT and rights incident thereto, as set forth in instrument:
 Recorded in Docket 6116
 Page 883
 Purpose gas distribution lines and associated matters

SCHEDULE B
(Continued)

9. **AGREEMENT**, according to the terms and conditions, contained therein:
- Purpose purchase of water and/or share in a well
Docket 7447
Page 814
10. **RESOLUTION** No.1989-59 by the Pima County Board of Supervisors, relating to water well sites as set forth in Instrument recorded in Docket 8514 at page 1253.
11. **AGREEMENT**, according to the terms and conditions, contained therein:
- Purpose use of well
Docket 8643
Page 1625
12. **EASEMENT** and rights incident thereto, as set forth in Instrument:
- Recorded in Docket 8643
Page 1630
Purpose well site
13. **EASEMENT** and rights incident thereto, as set forth in Instrument:
- Recorded in Docket 9094
Page 1150
Purpose aerial easement for roof overhang
14. **LACK OF ACCESS TO** Interstate Highway 10, recorded in Docket 5671, Page 320.
15. Any matters arising by reason of Agreement for purchase of water and/or share in well as set forth in Instrument recorded in Docket 7447 at page 814 and in Docket 8643 at page 1625.
16. Any matters arising by reason of Resolution No. 1985-140 right of way required for improvement of Santa Cruz River Bank as set forth in Instrument recorded August 26, 1985 in Docket 7605 at page 1356.

SCHEDULE B
(Continued)

20. **EASEMENT and rights incident thereto, as set forth in instrument:**

Recorded in Docket 13568
Page 5551
Purpose Permanent Sewer

21. **MATTERS SHOWN ON SURVEY:**

Recorded in Document 20122560351 of Record of Surveys.

22. **Any matters arising by reason of Resolution of Establishment of new right of way for the improvement of Interstate Route 10, recorded December 18, 2014 in Document No. 20143520133.**

END OF SCHEDULE B – PART II

Exhibit H

CONTRACTNO. C7N-PW-12000002000000000500

AMENDMENT NO. _____

This number must appear on all
invoices, correspondence and
documents pertaining to this**LEASE AGREEMENT**

This Agreement made and entered into by and between Mountain View Tours Inc, hereinafter called the "Tenant" and Pima County, a Political Subdivision of the State of Arizona, hereinafter called the "Landlord".

1. **Landlord** is the owner of lease property located in Pima County, Arizona, as depicted in Exhibit "A" attached (the "Premises").
2. **Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, under the terms and conditions and for the purposes set forth herein (the "Premises").
3. **Term.** The term of this Agreement shall be for one (1) year commencing on the date of approval by Pima County Procurement Director, unless terminated pursuant to Paragraph 21 of this Agreement. This Agreement shall be reviewed 90 days before the end of the one year, at which time the parties will agree whether to terminate or continue the Agreement for one additional 1 year term. Renewal shall be by written amendment, signed by both parties.
4. **Rent.** Tenant shall pay a rental rate of \$ 1,500.00 per month, due on or before the first day of each month, except that the first rent payment shall be due upon execution of Lease. The first and last rent payments shall be prorated for a partial month if necessary. If rent is not paid within 15 days of the due date, a \$250.00 late charge shall be assessed and due and payable with rent.
5. **Tenant's Use of the Premises.** Tenant may use and occupy the Premises to use as a parking for buses and employees cars (the "Permitted Activities").
 - A. **Expense of Tenant.** Tenant shall conduct all of its operations at the Premises at its own expense and without contribution from Landlord. Tenant shall not suggest, state or imply that Landlord will participate, guarantee or otherwise assist in any financial obligation undertaken by Tenant with respect to its operations on the Premises.
 - B. **Hours of Operation; Open to Public.** Tenant may conduct Permitted Activities on the Premises 24 hours a day.
 - C. **Compliance with Laws.** Tenant shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules, regulations, standards, policies, and executive orders with respect to its operations on the Premises.
 - D. **Alcohol Prohibited.** Possession, consumption, or sale of alcoholic beverages shall not be permitted on the Premises. *No exceptions shall be permitted.*
6. **Improvements to Premises.** All improvements, made to the Premises by Tenant must receive the prior written approval of Landlord, to whom Tenant shall submit detailed plans and specifications. Improvements shall be constructed in a good and workmanlike manner using new materials, in compliance with the approved plans and specifications and with all

applicable laws, rules, and regulations, including all applicable building, electrical and other codes.

7. **Concessions.** With the exception of vending machine the tenant may not operate concessions or food services on the Premises.
8. **Condition of Premises/Maintenance & Repairs.** Tenant accepts the Premises in an "as is" condition. Tenant shall maintain the Premises at all times hereunder in a good, clean, safe and sanitary condition, at its sole cost and expense, including making any necessary repairs or replacements of improvements thereon, and shall leave the Premises, upon the expiration or earlier termination of this Lease, in a condition at least as good as upon the Effective Date, reasonable wear and tear excepted.
9. **Utilities.** Tenant shall pay the cost of all utilities used in connection with its operation of the Premises.
10. **Signs.** Tenant may affix and maintain upon the Premises such signs relating to the services provided on the Premises as Tenant deems appropriate; provided, however, if such signs are visible outside of the Premises, such signs must have first received the written approval of Landlord as to type, size, color, location, copy nature and display qualities; provided further, however, that all signs utilized by Tenant on or about the Premises, whether visible outside the Premises or not, shall at all times comply with the Pima County Sign Code and shall be installed and maintained at Tenant's sole cost.
11. **Environmental.** Tenant shall not cause or permit any hazardous or toxic substance or material to be brought upon, kept, or used in or about the Premises by Tenant, its agents, employees, contractors or invitees. Tenant shall fully comply with all environmental rules and regulations with respect to its operations on the Premises and shall remediate and clean up any contamination of the Premises occurring during the term of this Lease.
13. **Entry by Landlord.** Landlord may enter the Premises at reasonable times to inspect the Premises and Tenant's operations thereon.
12. **Security.** Tenant shall be responsible for the securing the Premises and preventing any unlawful or unauthorized use thereof. When the Premises are not open to the Public, they shall be secured in order to prevent unsupervised use or entry into the Premises. Tenant shall contact law enforcement authorities when it appears necessary to protect the Premises and any persons or property thereon, and it shall assist in any resulting prosecution.
13. **Insurance.**
 - A. Types of Insurance Required. Tenant shall procure, prior to the Effective Date, and maintain throughout the term of this Lease, the following insurance from an insurance company or companies approved by Landlord:
 - (1) Commercial General Liability insurance with coverage at least as broad as ISO form CG 00 01 in an amount not less than \$1,000,000, covering the Premises, endorsed to

include Pima County as an additional insured with coverage at least as broad as ISO form CG 20 10.

- (2) Automobile liability insurance covering all vehicles used on the Premises, with limits not less than \$1,000,000 combined single limit.
- (3) Workers' compensation insurance, including employer's liability insurance, if required by law.
- (4) Property insurance for the full insurable value of the personal property owned by, or under the control of, Tenant.

B. Certificates. Tenant shall provide Landlord with copies of certificates of insurance showing the current status of all insurance policies. Tenant shall, in addition, provide full, certified copies of all required insurance policies when requested by Landlord in writing. All certificates of insurance shall provide for a guaranteed thirty (30) days written notice of cancellation, non-renewal, or material change. Any modifying language in a certificate of insurance must be deleted. Landlord shall be an "additional insured" on all liability insurance policies.

C. Changes to Insurance Requirements. Landlord may review the coverage, form, and amount of insurance required hereunder at any time. Landlord shall notify Tenant in writing of any changes to the aforesaid insurance requirements, and Tenant shall have sixty (60) days to comply with the requirements as changed.

14. Indemnification. To the fullest extent permitted by law, Tenant shall defend, indemnify, and hold harmless Landlord, its officers, agents, and employees, from and against any and all claims, liabilities, losses, damage, cost and expense, including but not limited to reasonable attorney's fees and/or litigation expenses, arising out of or resulting from the conduct or management of the Premises, or any accident, injury, damage, or violation of law whatsoever occurring in or at the Premises allegedly caused in whole or in part by any act or omission of Tenant or anyone directly or indirectly employed by it, its agents, representatives, contractors, subcontractors, licensees, or anyone for whose acts it may be liable, regardless of whether it is caused in part by the negligent act or omission of Landlord or any of its officers, agents, or employees. To the fullest extent permitted by law, Tenant shall also indemnify Landlord against any claim, liability, damage, cost, or expense arising out of the disposal, or release of any hazardous substance, hazardous waste, hazardous materials, or petroleum products or by products on, from or under the Premises during the term of this lease.

15. Tenant not an Agent of Landlord. Tenant is not an agent of Landlord for any purpose under this Lease or otherwise. Tenant shall control activities on the Premises, and Landlord shall not control those activities. Tenant's employees and servants shall not be under the control of Landlord.

16. Default/Termination.

A. Immediate Termination of Lease. This Lease may be terminated immediately by Landlord for any of the following:

- (i) Tenant at any time is without the required insurance;
- (ii) Tenant violates any law, or permits any unlawful activities to be carried out on the Premises;
- (iii) Tenant takes or fails to take any action and this action or nonaction, in the County's sole judgment, causes or exacerbates a threat to the health or safety of the general public or the users of the facility;
- (iv) Tenant creates or permits any waste or nuisance on the Premises;
- (v) Tenant permits the consumption of alcohol on the Premises.

B. Other Defaults. For any other default, the non-breaching party may terminate the Lease only if the breaching party fails to cure the default within thirty (30) days of receiving written notice from the non-breaching party describing the default, except that a party may terminate this Lease if the other party is guilty of four (4) such defaults in a twelve-month period, even if each default was cured in a timely manner. Both parties may pursue any other remedies provided by law for the breach of this Lease. No right or remedy conferred or reserved is intended to be exclusive of any other right or remedy, and each shall be cumulative and in addition to any other right or remedy conferred or reserved in this Lease.

17. Notices. Any notices required hereunder shall be delivered personally or by certified mail, directed as follows:

If to Tenant: Mountain View Tours
P.O. Box 91890
Tucson, Arizona 85752-1890

If to Landlord: Clerk of the Board of Supervisors
Pima County
130 West Congress
Tucson, AZ 85701

With a copy to: Real Property Services
Pima County
201 N. Stone, 6th Floor
Tucson, AZ 85701

18. Cancellation for Conflict of Interest. This Lease may be cancelled for conflict of interest pursuant to A.R.S. § 38-511.

19. **Non-Discrimination.** Tenant shall comply with applicable state and federal rules concerning equal employment opportunity and non-discrimination. Tenant shall further comply with the Americans with Disabilities Act, to the extent applicable to Tenant's operation and the Premises.
20. **Choice of Law.** The laws of the State of Arizona shall apply to any action relating to this Lease and any court action shall be brought in a court in Pima County, Arizona.
21. **Termination.** Landlord may terminate the lease without cause with 30 days written notice. Tenant may terminate this lease for any reason with a 30 day written notice to Landlord, including, but not limited to, the construction of a Wastewater interconnect. Upon the termination or expiration of this Agreement, or any extension thereof, Tenant shall leave the Leased Property in a good and clean condition. Tenant shall remove any Tenant-built or installed improvements prior to vacating the Property if requested by Landlord or unless requested to be left in place by Landlord.
22. **Personal Property.** Tenant shall maintain a current inventory of all items of personal property owned by Tenant and placed or kept on the Premises by Tenant. Any items of personal property left on the Premises upon expiration or earlier termination of this Lease shall become the property of Landlord and may be sold or otherwise disposed of by Landlord without liability to Tenant.
23. **Liens.** Tenant shall timely pay all contractors, subcontractors, mechanics, laborers, or materialmen providing materials or services with respect to the Premises, and shall not permit any lien to attach to the Premises or any interest therein, and shall indemnify and defend Landlord against all legal costs and charges resulting from any such lien.
24. **Non-Waiver.** The failure of either party to insist in any one or more instances upon the full and complete performance of any of the terms and provisions of this Lease to be performed by the other party, or to take any action permitted as a result thereof, shall not be construed as 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 to it at any time shall not be construed as an accord and satisfaction.
25. **Assignment/Subletting.** Any attempted assignment of this Lease by either Party hereto without prior written consent from the other Party shall be void. This Lease shall be binding on any and all successors and assigns to the Landlord and the Tenant. Tenant shall not sublet any portion of the Premises without the prior written consent of Landlord, which consent may be given conditionally.
26. **Entire Agreement.** This Lease shall constitute the entire contract between Landlord and Tenant with respect to the Premises and no modification hereof shall be binding unless in writing and signed by both parties.

EXECUTED this _____ day of _____, 2012.

TENANT: Mountain View Tours

LANDLORD: Pima County

By: *R. M. Key*
Title: *Joe M. Key*
Date: *3/31/12*

By: *L. A. Williams*
Title: Procurement Director
Date: *3/2/12*


Approved as to Form:

[Signature]
Deputy County Attorney

Exhibit "A"

SECTION 17
TOWNSHIP 13 SOUTH
RANGE 13 EAST



 N	Pima County Public Works Administration Real Property Services	
	DRAWING NOT TO SCALE	DATE: October 11, 2007

PIMA COUNTY DEPARTMENT OF: REAL PROPERTY SERVICES LANDLORD: Pima County TENANT: Mountain View Tours, Inc CONTRACT NO.: CTN-PW-12000000000000000500 LEASE RENEWAL: No 1	CONTRACT NO. CTN-PW-12000000000000000500 AMENDMENT NO. 01 <small>This number must appear on all invoices, correspondence and documents pertaining to this contract</small>

ORIGINAL LEASE TERM:	03-02-12	ORIG. LEASE AMOUNT:	\$18,000.00 yr.
TERMINATION DATE PRIOR RENEWAL:	02-28-13	PRIOR AMENDMENTS:	
TERMINATION THIS RENEWAL:	02-28-14	AMOUNT THIS AMENDMENT:	\$18,000.00
		TOTAL LEASE AMOUNT:	\$36,000.00

Lease Agreement Amendment for Renewal
3180 W. Diamond
TUCSON, AZ

1. DEFINED TERMS. For purposes of this Amendment, the following terms have the meanings set forth below:

1.1. Landlord: Pima County, a political subdivision of the State of Arizona (hereinafter referred to as "Landlord")

1.2. Tenant: Mountain View Tours, Inc.,

1.3. Premises: 3180 W. Diamond

1.4. Lease: The lease for the Leased Premises naming Tenant as tenant dated March 2, 2012.

1.5. Effective Date: The date this Amendment is executed by all of the parties hereto

2. MODIFICATION OF LEASE. Landlord and Tenant hereby agree to modify the terms of the Lease as follows:

2.1. The term of the Lease Agreement referred to above is hereby extended to February 28, 2014, pursuant to Paragraph 3 of the Lease Agreement.

3. **REMAINING LEASE TERMS UNCHANGED.** Except as modified as provided in this Amendment, all of the terms and conditions of the Lease shall remain in full force and effect.

4. **EFFECTIVE DATE.** This Amendment shall be effective as of the Effective Date.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the day, month and year written below.

LANDLORD:

Pima County, a political subdivision of
the State of Arizona

L. A. Widugro
Procurement Director

Date 4/22/13

TENANT:

Mountain View Tours, Inc

Gary P. Conser
Signature

Gary P. Conser President
Name and Title (please print)

Date 3/8/13

APPROVED AS TO CONTENT:

Neil J. Konigsberg
Neil J. Konigsberg, Manager, Real Property Services

APPROVED AS TO FORM:

Tobin Rosen
Tobin Rosen, Deputy County Attorney, Civil Division

Exhibit I



LANDLORD: Pima County

TENANT: Mountain View Tours, Inc.

ADDRESS OF PROPERTY:
3180 W. Diamond St., Tucson, AZ

REVENUE CONTRACT

Ground Lease Agreement

1. **PARTIES; EFFECTIVE DATE.** This Lease ("**Lease**") is made by and between Mountain View Tours, Inc., an Arizona corporation (hereinafter referred to as "**Tenant**") and Pima County, a political subdivision of the State of Arizona (hereinafter referred to as "**Landlord**" or "**Pima County**"). This Lease shall be effective (the "**Effective Date**") on the date it is signed by the Chair of Pima County's Board of Supervisors.
2. **BACKGROUND AND PURPOSE.**
 - 2.1. Landlord owns the property legally described and depicted on **Exhibit A** (hereinafter referred to as the "**Land**"), which is an approximately 42,357 square feet parcel of real property located at 3180 W. Diamond St., Tucson, Arizona. The Land is part of a larger parcel depicted on **Exhibit A** and hereinafter referred to as the "**Diamond Street Property**."
 - 2.2. Tenant is authorized to operate a charter bus company in the State of Arizona.
 - 2.3. Tenant desires to use the Land to park buses it uses in the operation of its business.

2.4. Landlord has the authority to lease the Land to Tenant. Landlord has provided notice, appraised the Land and held an auction in accordance with A.R.S. §11-256. Tenant was the highest responsible bidder at the auction.

2.5. Landlord desires to lease the Land to Tenant, and Tenant desires to lease the Land from Landlord, together with all improvements now on or hereafter located on the Land (the "**Premises**"), under the terms and conditions set forth in this Lease.

3. PREMISES.

3.1. **Lease.** In consideration of Tenant's compliance with all the terms and conditions of this Lease, and timely performance of all its obligations under this Lease, Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord. Tenant will use the Premises solely for parking buses it uses in the operation of its business.

3.2. **Condition of Land.** Tenant acknowledges that it is fully familiar with the physical and legal condition of the Land and has received the same in good order and condition. LANDLORD MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE CONDITION OR STATE OF THE LAND OR ITS FITNESS OR AVAILABILITY FOR ANY PARTICULAR USE, AND LANDLORD IS NOT LIABLE FOR ANY LATENT OR PATENT DEFECT THEREIN. Tenant's use of the Premises is subject to all existing easements, rights-of-way and set-backs existing as of the date of this Lease.

3.3. **Quiet Enjoyment.** Landlord covenants and agrees that upon Tenant paying the Rent and performing and observing all of the Tenant's obligations under this Lease, Tenant may peaceably and quietly have, hold and enjoy the Premises for the Term, without hindrance or molestation by anyone claiming paramount title or claims through Landlord.

3.4. **Entry by Landlord.** Landlord reserves the right to enter the Premises to inspect the same; provided that if such entry is not during normal business hours, Landlord will give Tenant at least twenty-four (24) hours advance notice. Landlord will make a reasonable effort to not interrupt Tenant's business at the Premises. Landlord at any and all times will have the right to use any and all means which Landlord may deem proper to open gates or doors in an emergency in order to obtain entry to the Premises, without liability to Tenant, except for any failure to exercise due care for Tenant's property, and any entry to the Premises obtained by Landlord by any such means, or otherwise, will not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof.

4. **ACCESS TO PREMISES.** Landlord and Tenant acknowledge that, until such time as access to the Diamond Street Property from the Interstate-10 frontage road is constructed, vehicles must access the Premises from Diamond Street by crossing the Diamond Street Property. Landlord and Tenant further acknowledge that a future access drive from the Interstate-10 frontage road to the Diamond Street Property, in approximately the location depicted in Exhibit "B" ("Future Access") has been proposed as part of a tentative settlement between Landlord and DFA, L.L.C., in Pima County Superior Court cause no. C20112935. Until such time as the Future Access is constructed, Landlord grants Tenant a revocable license across only that portion of the Diamond Street Property depicted as the "25 foot preferred access route" in Exhibit "A" ("Current Access") for the sole purpose of allowing Tenant to access the Premises. Tenant shall use the Current Access until notified by Landlord that the Future Access has been constructed. Upon Landlord's written notice to Tenant that the Future Access has been constructed, Tenant's license to use the Current Access shall automatically terminate and Tenant shall thereafter access the Premises using only the Future Access. Landlord agrees to grant Tenant a revocable license to cross the Diamond Street Property only to the extent necessary to allow Tenant to access the Premises from the Future Access.
5. **TERM.**
- 5.1. **Term.** This Lease will commence on the Effective Date and continue for a period of one (1) year (the "**Term**"), unless terminated earlier in accordance with the terms of this Lease.
- 5.2. **Holdover.** Any holding over with the consent of Landlord after the expiration of the Term or earlier termination of the Lease will be construed to be a tenancy from month-to-month upon the same terms and conditions as provided in this lease, to the extent applicable, provided that Rent shall be increased annually, commencing one year after the Effective Date, by the lesser of (i) Three and One-Half Percent (3.5%) annually (not compounded), or (ii) by the increase, if any, in the Consumer Price Index—U.S. City Average—All Urban Consumers ("**Index**") as published by the U.S. Department of Labor, Bureau of Labor Statistics ("**Bureau**") for the five year period ending prior to the rent adjustment date. Should the Bureau discontinue the publication of the Index, or publish it less frequently, or alter it in any other manner, then Tenant shall adopt a substitute index or substitute procedure that reasonably reflects and monitors consumer prices, that is reasonably acceptable to Landlord.
- 5.3. **Termination.** Landlord may terminate the lease without cause with thirty (30) days written notice. Tenant may terminate this lease for any reason with thirty (30) days written notice to Landlord. Upon the termination or expiration of this Lease, or any extension thereof, Tenant shall leave the Premises in a good and clean condition. Tenant shall remove any Tenant-built or installed

improvements prior to vacating the Premises if requested by Landlord or unless requested to be left in place by Landlord.

6. RENT.

- 6.1. Annual Rent.** Tenant will pay monthly rent ("**Rent**") in the amount of One Thousand Five Hundred Dollars (\$1,500.00).
- 6.2. Payment of Rent.** Rent shall be due and payable in monthly installments, in advance, on or before the first day of each month during the Term, without demand. The first and last rent payments shall be prorated for a partial month if necessary.
- 6.3. Late Fee.** If rent is not paid by the due date, a One Hundred Twenty-Five Dollar (\$125.00) late charge shall be immediately due and payable.
- 6.4. Rental Taxes.** Tenant must pay to Landlord any occupancy tax, rent tax or government property lease excise tax now in effect or hereafter enacted, which Landlord is now or hereafter required to collect from Tenant or to pay with respect to the Premises or this Lease.
- 6.5. Other Taxes.** Tenant is responsible for payment of all taxes, whether real property taxes, personal property taxes, income taxes, or any other taxes, if any, that are or may be assessed relating to Tenant's use of the Premises pursuant to this Lease.

7. ALTERATIONS. All changes, alterations, additions, substitutions or improvements to the Premises (collectively, "**Alterations**"), shall be at Tenant's sole cost and expense, and shall comply with the following requirements:

- 7.1. Minor Alterations.** Tenant may make such non-structural Alterations as Tenant may reasonably consider necessary and desirable to adapt or equip the Premises for Tenant's use and occupancy, provided Tenant has received the prior written consent of the Manager of Pima County Real Property Services, and the cost of such Alterations do not exceed Fifteen Thousand Dollars (\$15,000.00).
- 7.2. Substantial Alterations.** Tenant will make no Alterations that will (i) cost in excess of \$15,000.00; or (ii) involve structural work or changes (collectively, "**Substantial Alterations**"), unless Tenant first delivers detailed plans and specifications to Landlord and obtains the prior written approval of the Pima County Administrator or his designee.

- 7.3. **Construction of Alterations.** All Alterations shall be constructed in a good and workmanlike manner in compliance with the approved plans and specifications and with all applicable laws, rules, and regulations, including all applicable building, electrical and other codes.
8. **Concessions.** With the exception of vending machines, Tenant may not operate concessions or food services on the Premises.
9. **USE OF PREMISES.** Tenant may use and occupy the Premises as parking for buses and employees' cars (the "***Permitted Activities***").
- 9.1. **Expense of Tenant.** Tenant shall conduct all of its operations at the Premises at its own expense and without contribution from Landlord. Tenant shall not suggest state or imply that Landlord will participate, guarantee or otherwise assist in any financial obligation undertaken by Tenant with respect to its operations on the Premises.
- 9.2. **Hours of Operation; Open to Public.** Tenant may conduct the Permitted Activities on the Premises twenty-four (24) hours per day.
- 9.3. **Compliance with Laws.** Tenant shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules, regulations, standards, policies, and executive orders with respect to its operations on the Premises.
- 9.4. **Prohibited Activity.** Tenant may not permit any unlawful activities on the Premises, or any activities that unduly interfere with activities of neighboring property owners/occupants. Tenant shall comply with all local, state and federal laws including but not limited to Pima County Code Chapter 9.30—"Regulation of Excessive, Unnecessary and Annoying Noises". Possession, consumption, or sale of alcoholic beverages shall not be permitted on the Premises. *No exceptions shall be permitted.*
- 9.5. **Activities not Insured or that Affect Insurance.** Tenant shall not conduct any activity or permit any activity to be conducted on the Premises which is not covered by the insurance policies provided pursuant to Section 12 herein without first obtaining the written consent of Landlord and without providing additional insurance covering the activity or event and with coverage limits and carriers acceptable to Landlord. Tenant shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the existing rate of or affect any fire or other insurance upon the Premises or any of its contents or cause a cancellation of any insurance policy covering the Premises or any part thereof or any of its contents.

10. ENVIRONMENTAL COMPLIANCE.

- 10.1. Hazardous Materials Defined.** As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Arizona or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) petroleum or petroleum products; or (ii) defined as a Hazardous Material under A.R.S. 26-301(8).
- 10.2. Hazardous Materials Prohibited; Clean Air Act.** Tenant may not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept, or used in or about the Premises by Tenant, its agents, employees, contractors or invitees, without the prior written consent of Landlord, other than such Hazardous Materials as are customarily necessary or useful to the type of operations permitted under this Lease and actually being carried out by Tenant on the Premises which will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Materials. Tenant's operations on the Premises must comply with applicable provisions of the Clean Air Act, 42 U.S.C. 7401 et seq. and Arizona Revised Statutes, Title 49, Chapter 3 and any other applicable environmental laws or regulations.
- 10.3. Indemnity.** If (i) Tenant breaches the obligations stated in the preceding paragraph, (ii) the presence (whether consented to by Landlord or otherwise) of Hazardous Material on the Premises or on or in the soil or ground water under or adjacent to the Premises is caused or permitted by Tenant, its agents, employees, contractors or invitees, (iii) contamination of the Premises or soil or ground water under or adjacent to the Premises by Hazardous Material otherwise occurs for which Tenant is legally liable, or (iv) contamination occurs elsewhere in connection with the transportation by Tenant of Hazardous Material to or from the Premises, then Tenant will indemnify, protect, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities or losses (including, without limitation, diminution in value of the Premises or any part thereof, damages for the loss or restriction on use of usable space or of any amenity of the Premises or any part thereof, damages arising from any adverse impact on marketing of space with respect to the Premises or any part thereof, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arose or arises during or after the term of this Lease as a result of such contamination. The foregoing obligation of Tenant to indemnify, protect, defend and hold

Landlord harmless includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, restoration or other response work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present, as a result of any action or inaction on the part of Tenant, its agents, employees, contractors or invitees, in the Premises or the soil or ground water on, under or adjacent to the Premises, or elsewhere in connection with the transportation by Tenant of Hazardous Material to or from the Premises.

- 10.4. **Clean-up.** Without limiting the foregoing, if the presence of any Hazardous Material on or in the Premises, or the soil or ground water under or adjacent to the Premises caused or permitted by Tenant, or its agents, employees, contractors or invitees results in any suspected contamination of the Premises, the soil or ground water under or adjacent to the Premises, Tenant must promptly notify Landlord in writing and take all actions at its sole expense as are necessary to return the Premises, or such soil or ground water to the condition existing prior to the introduction of any such Hazardous Material to the Premises, or to such soil or ground water; provided that Landlord's approval of such actions is first obtained, which approval may not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises.
- 10.5. **Pre-Existing Contamination.** Landlord agrees that any Hazardous Materials contaminating the Premises prior to possession of the Premises by Tenant will not result in liability for Tenant under this Paragraph except to the extent such contamination is aggravated by the action or inaction of Tenant.
- 10.6. **Notices Regarding Environmental Conditions.** Tenant must, within ten (10) business days following receipt thereof, provide Landlord with a copy of (i) any notice from any local, state or federal governmental authority of any violation or administrative or judicial order or complaint having been filed or about to be filed against Tenant or the Premises alleging any violation of any local, state or federal environmental law or regulation or requiring Tenant to take any action with respect to any release on or in the Premises or the soil or ground water under or adjacent to the Premises of Hazardous Material, or (ii) any notices from a federal, state or local governmental agency or private party alleging that Tenant may be liable or responsible for cleanup, remedial, removal, restoration or other response costs in connection with Hazardous Material on or in the Premises or the soil or ground water under or adjacent to the Premises or any damages caused by such release.

- 10.7. **Survival.** Tenant's obligations under this Section will survive the expiration or earlier termination of this Lease and vacation of the Premises.

11. REPAIR, MAINTENANCE AND UTILITIES.

- 11.1. **Maintenance and Repairs.** All Alterations on the Premises, both outside and inside, must be put and kept in good order and repair by Tenant at Tenant's sole cost and expense, and Tenant must make all repairs and replacements, ordinary as well as extraordinary, foreseen and unforeseen, structural or otherwise, that may be necessary or required, except as provided in Section 11.2 below. If Tenant fails to make such repairs, restoration or replacements, Landlord may make them, and Tenant must reimburse Landlord for the costs within ten days after Landlord sends Tenant an invoice.
- 11.2. **Damage for Casualty.** If any improvement on the Premises is damaged or destroyed by any cause whatsoever, Tenant must, with reasonable promptness, repair and replace the same at its own expense, to at least the condition existing immediately prior to the damage or destruction, and must do so even though the proceeds of any insurance policies covering the loss are insufficient to reimburse Tenant therefore, and Tenant's obligations under this Lease will not be terminated or suspended; except that, that if the Premises are substantially destroyed by fire or other casualty at any time during the last five (5) years of the Initial Term, or the Option Period, then Tenant may terminate this Lease by written notice given to Landlord within sixty (60) days after the date of such destruction, and Tenant will be discharged from responsibility to repair the damage, but Tenant must in that event, at Tenant's sole cost and expense, clean and clear the Land of all debris and repair the Land and install landscaping so that the Land blends in reasonably well with the surroundings.
- 11.3. **Utilities** Tenant must, at its sole cost and expense, arrange for the furnishing of all utilities, including electricity, gas, water and sewer, and telecommunication services, fire protection lines and hydrants, that are necessary for its operations on the Premises, and Tenant covenants and agrees to pay all charges for such utilities and services directly to the supplier thereof. Landlord will not be liable in any way to Tenant for any failure or defect in the supply or character of utilities or telecommunications services furnished to the Premises by reason of any requirement, act or omission of the provider of such service or for any other reason.

12. INSURANCE; INDEMNIFICATION.

- 12.1. **Maintenance of Insurance.** Tenant shall procure and maintain, until all of Tenant's obligations, including any warranty periods under this Lease, are satisfied, insurance against claims for injury to persons or damage to

property which may arise from or in connection with the performance of the work hereunder by the Tenant, its agents, representatives, employees or subcontractors.

- 12.2. **Minimum Requirements.** The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained in this Lease. Landlord in no way warrants that the minimum limits contained herein are sufficient to protect the Tenant from liabilities that might arise out of the performance of the work under this Lease by the Tenant, its agents, representatives, employees or subcontractors, and Tenant is free to purchase additional insurance.
- 12.3. **Types of Insurance Required.** From the effective date of this Lease until it is terminated, Tenant shall provide coverage with limits of liability not less than those stated below:
- 12.3.1. **Commercial General Liability.** Coverage at least as broad as ISO form CG 00 01 in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$1,000,000) aggregate covering the Premises, endorsed to include Pima County as additional insured with coverage at least as broad as ISO form CG 20 10, and covering all activities carried out at the Premises.
- 12.3.2. **Business Automobile Liability.** Tenant shall provide Auto Liability coverage for Bodily Injury and Property Damage in the amount of \$1 million combined single limit for vehicles used in the performance of services under this Lease and any renewals thereof.
- 12.3.3. **Property Insurance.** Tenant shall obtain and keep in force during the term of this Lease a policy of insurance covering loss or damage to the Premises in the amount of the full replacement value thereof, providing protection against all vandalism, malicious mischief, special extended perils (all risk) and shall deliver to Landlord a Certificate of Property Insurance, with Landlord named as additional insured. Said Certificate must be satisfactory to Landlord. Tenant will provide a copy of Tenant's policy of Property Insurance to Landlord annually.
- 12.4. **Additional Insurance Requirements.** The policies shall include, or be endorsed to include, the following provisions:

- 12.4.1. Additional Insured shall be Pima County, its departments and its officers, officials, agents, and employees wherever additional insured status is required. Such additional Insured shall be covered to the full limits of liability purchased by Tenant, even if those limits of liability are in excess of those required by this Lease.
- 12.4.2. Each Insurance policy shall contain a severability of interests provision and shall waive subrogation against Pima County.
- 12.4.3. Tenant's liability insurance coverage shall be primary insurance with respect to all other available sources.
- 12.4.4. Coverage provided by Tenant shall not be limited to the liability assumed under the indemnification provisions of this Lease.
- 12.4.5. Policies shall contain a waiver of subrogation against Pima County.
- 12.5. **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Lease shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Pima County.
- 12.6. **Acceptability of Insurers.** Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. Landlord in no way warrants that the above-required minimum insurer rating is sufficient to protect Tenant from potential insurer insolvency.
- 12.7. **Verification of Coverage.**
 - 12.7.1. Tenant shall furnish Landlord with certificates of insurance (ACORD form or equivalent approved by Pima County) as required by this Lease. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
 - 12.7.2. All certificates and endorsements are to be received and approved by the Pima County Risk Manager before occupancy or work commences under this Lease. Each insurance policy required by this Lease must be in effect at or prior to occupancy or commencement of work under this Lease and remain in effect for the duration of this Lease. Failure of Tenant to maintain the insurance policies as required by this Lease, or to provide evidence of renewal, is a material breach of this Lease.

- 12.7.3. All certificates required by this Lease shall include the Pima County project/contract number and the project number and description shall be noted on the certificates of insurance. Landlord reserves the right to require complete, certified copies of all insurance policies required by this Lease at any time.

12.8. Approval.

- 12.8.1. Any modification or variation from the insurance requirements in this Lease shall be made by the Landlord's Risk Management Division, whose decision shall be final. Such action will not require a formal amendment to this Lease, but may be made by administrative action.

- 12.8.2. Any construction or renovation projects on the Premises will require additional insurance coverage such as Builder's Risk insurance. Pima County Risk Management will provide the additional insurance requirements required for any construction or renovations.

- 12.9. **Indemnification.** Tenant agrees that, to the fullest extent permitted by law, Tenant will indemnify, defend, and hold harmless Landlord, its officers, employees and agents from and against any and all losses, costs, or expenses (including reasonable attorney fees) incurred or suffered by Landlord as a result of any damages to property or injuries to persons (including death), or any suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of or directly related to any act, omission, fault or negligence by the Tenant, its agents, employees, invitees, contractors or anyone under its direction or control or acting on its behalf, or anyone permitted by Tenant to conduct any activity on the Premises, or in connection with any use or occupancy of the Premises under the terms of this Lease.

13. DEFAULT/TERMINATION.

- 13.1. **Tenant Default.** The occurrence of any one or more of the following events will constitute a default and breach of this Lease by Tenant for which Landlord may terminate this Lease:

- 13.1.1. Operation of Premises. The vacating or abandonment of the Premises, or cessation of activities thereon, or any portion thereof, by Tenant, that continues for a period of ten (10) calendar days after notice of such default is sent by Landlord to Tenant.

- 13.1.2. **Monetary Obligations.** The failure by Tenant to make any payment required to be made by Tenant under this Lease, as and when due, that continues for a period of ten (10) calendar days after notice from Landlord that such payment is due.
- 13.1.3. **Insurance.** The failure by Tenant to maintain insurance policies as set forth above for any period of time, in which event Tenant must immediately cease all operations at the Premises until such insurance is obtained. In the event of such a default, Landlord may, in Landlord's sole discretion, obtain necessary insurance coverage in which event Tenant must, within five (5) days of demand, reimburse and pay to Landlord the full amount of any costs and premiums expended by Landlord to obtain such coverage.
- 13.1.4. **Violation of Law.** Violation of any law by Tenant, or the conduct of any unlawful activities on the Premises that are permitted by Tenant, either tacitly or explicitly, or that Tenant has not taken reasonable means to prevent after Tenant becomes or in the exercise of reasonable diligence should have become aware that such activities are being conducted.
- 13.1.5. **Health and Safety Violation.** Any action or omission by Tenant that, in Landlord's reasonable judgment, causes a threat to the health or safety of the general public or the users of the Premises or neighboring properties.
- 13.1.6. **Other Covenants.** The failure by Tenant to observe or perform any other of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant that continues for a period of thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant will not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion. The notice and cure periods in this paragraph do not apply to the automatic termination provisions in Section 5.3.
- 13.2. **Landlord Default.** Landlord will be deemed to be in default hereunder if Landlord fails to perform any covenant or condition of this Lease to be performed by Landlord and such failure continues for thirty (30) days after written notice and demand from Tenant, unless the failure is of such a character as to require more than thirty (30) days to cure, in which event

Landlord will be in default only if it fails to initiate the cure within thirty (30) days, and thereafter diligently pursue the same to completion.

13.3. Remedies.

13.3.1. All Remedies Available. Either party may pursue any remedies provided by law and in equity for the breach of this Lease, including termination of the Lease. No right or remedy is intended to be exclusive of any other right or remedy and each will be cumulative and in addition to any other.

13.3.2. Cure by Landlord. Should Tenant fail to perform in a timely manner any of the covenants or terms of this Lease on its part to be performed, Landlord may (but is not obligated to) perform the same and charge Tenant for the costs thereof, together with interest thereon, at the greater of (i) ten percent (10%) per annum, or (ii) the rate set by statute for interest on judgments, from the date upon which the expense is incurred until paid by Tenant.

14. **NOTICES.** All notices given under this Lease must be in writing and either served personally or sent by certified or registered mail, return receipt requested, to the parties as indicated below or to such other persons, or addressees as either party may designate in writing to the other party:

If to Tenant: Mountain View Tours
P.O. Box 91890
Tucson, AZ 85752-1890

If to Landlord: Clerk of the Board of Supervisors
Pima County
130 West Congress
Tucson, AZ 85701

With a copy to: Manager, Pima County Real Property Services
201 N Stone Ave, 6th Floor
Tucson, AZ 85701

15. **ASSIGNMENT/SUBLETTING.** Tenant may not, either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and may not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or allow any other person (the employees, agents, servants and invitees of Tenant excepted) to occupy or use the Premises, or any portion thereof, without first obtaining the written consent of Landlord.

16. **SURRENDER OF PREMISES/HOLDING OVER.** On the last day or earlier termination of the Term of this Lease, Tenant must quit and surrender the Premises, in good condition and repair, normal wear and tear excepted. Tenant's obligations under this Section will survive the expiration or earlier termination of the Term of this Lease.
17. **SUSTAINABILITY PLAN.** In accordance with the County's Sustainability Plan, Tenant must use all reasonable efforts to use recycled products for its operation within the Premises, and re-use and recycle materials utilized in the Premises.
18. **CANCELLATION FOR CONFLICT OF INTEREST.** This Lease may be cancelled for conflict of interest pursuant to A.R.S. § 38-511, the provisions of which are incorporated herein by this reference.
19. **TENANT NOT AN AGENT OF LANDLORD.** Tenant is not an agent of Landlord for any purpose under this Lease or otherwise. Tenant will control activities on the Premises, and Landlord will not control those activities. Tenant's employees and servants will not be under the control of Landlord.
20. **NON-DISCRIMINATION.** Tenant agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive Order 99-4 and amends Executive Order 75-5 and may be viewed and downloaded at the Secretary of State of Arizona's website <http://www.azsos.gov/ear/2009/46/governor.pdf> which is hereby incorporated into this Lease as if set forth in full herein. During the performance of this Lease, Tenant shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
21. **NON-APPROPRIATION.** Notwithstanding any other provision in this Lease, this Lease may be terminated if for any reason, the County's Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Lease. In the event of such termination, County will have no further obligations to Tenant.
22. **CHOICE OF LAW.** The laws of the State of Arizona will apply to any action relating to this Lease and any court action must be brought and maintained in a court in Pima County, Arizona.
23. **NON-WAIVER.** The failure of either party to insist in any one or more instances upon the full and complete performance of any of the terms and provisions of

this Lease to be performed by the other party, or to take any action permitted as a result thereof, will not be construed as 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 to it at any time will not be construed as an accord and satisfaction.

24. **INTERPRETATION OF LEASE.** The parties acknowledge that each has had the opportunity to review this Lease with its counsel. This Lease will not be construed in favor or against either of the parties but will be interpreted fairly and equitably to effectuate the intent of the parties. All provisions contained in this Lease will bind and inure to the benefit of the parties hereto, their successors and assigns.
25. **ENTIRE AGREEMENT.** This Lease contains the entire agreement between the parties and all previous agreements, negotiations, or understandings are superseded by and merged in this Lease. This Lease may be modified by the parties only by writing executed with the same formalities as this Lease.
26. **AMENDMENT.** This Lease may not be amended except by a written instrument duly executed by both parties.
27. **ATTORNEY'S FEES.** In the event any action, suit or proceeding at law or in equity is instituted with respect to this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, expenses and court costs incurred.
28. **RECORDING.** This Lease may be recorded by Landlord or Tenant.
29. **TIME OF THE ESSENCE.** Time is of the essence of this Lease.
30. **AUTHORITY.** The undersigned represent to each other that they have full power and authority to enter into this Lease, and that all necessary actions have been taken to give full force and effect to this Lease. The undersigned further agree to produce all documents reasonably requested by the other party to evidence that the foregoing representation is true and correct, including but not limited to any partnership agreements, trust documents, operating agreements, articles of incorporation, or shareholder agreements.
31. **ATTORNEY'S REVIEW.** Pima County's Attorney is signing as to form only, and represents solely the interests of County. Each party shall bear the costs, if any, of their attorney incurred in connection with the negotiation and drafting of this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day, month and year written below.

TENANT: Mountain View Tours

RM Kays
Name

2/10/15
Date

Its: Office

LANDLORD: Pima County, a political subdivision of the State of Arizona

Chair, Board of Supervisors

Date

ATTEST:

Robin Brigode, Clerk of Board

Date

APPROVED AS TO CONTENT:

John Bernal, Deputy County Administrator – Public Works

Neil J. Konigsberg, Manager, Real Property Services

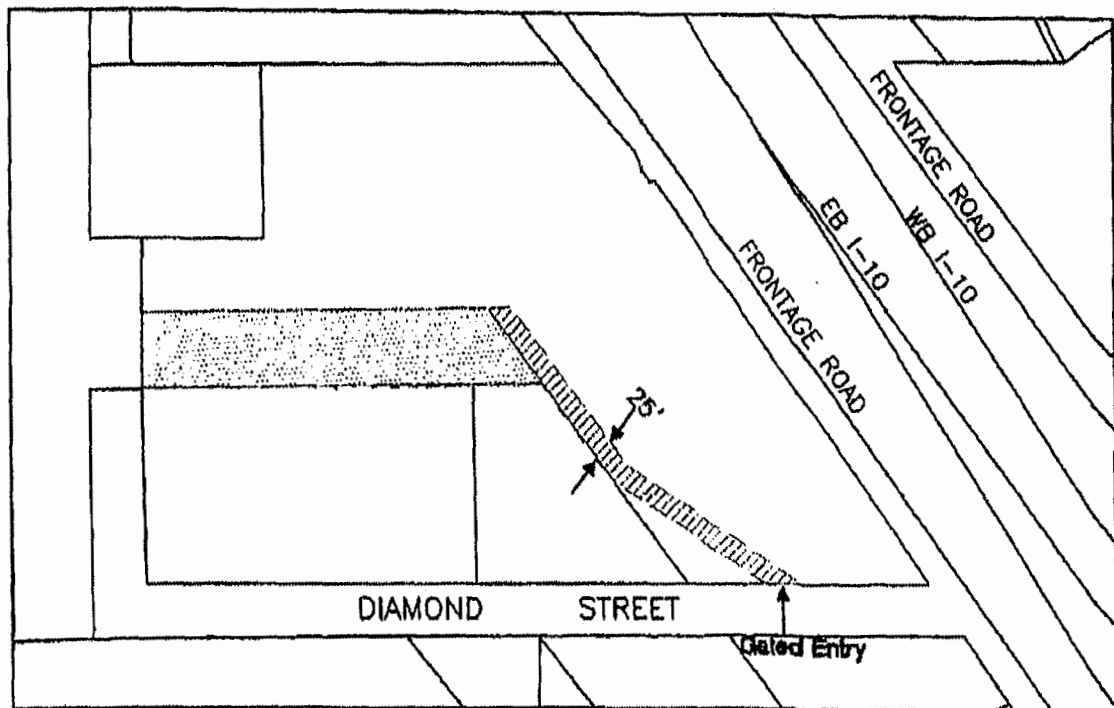
APPROVED AS TO FORM:

Tobin Rosen
Tobin Rosen, Deputy County Attorney, Civil Division

SECTION 17
TOWNSHIP 13 SOUTH
RANGE 13 EAST

EXHIBIT "A"

Mountain View Tours Lease Area & Preferred Access Route
3180 W. Diamond Street



- 42,357 sq ft LEASE AREA
- 25' PREFERRED ACCESS ROUTE



PIMA COUNTY DEPARTMENT OF TRANSPORTATION
ENGINEERING INFORMATION MANAGEMENT

DRAWING NOT TO SCALE

DRAWN BY: CPerez

DATE: 02/02/2015

SECTION 17
TOWNSHIP 13 SOUTH
RANGE 13 EAST

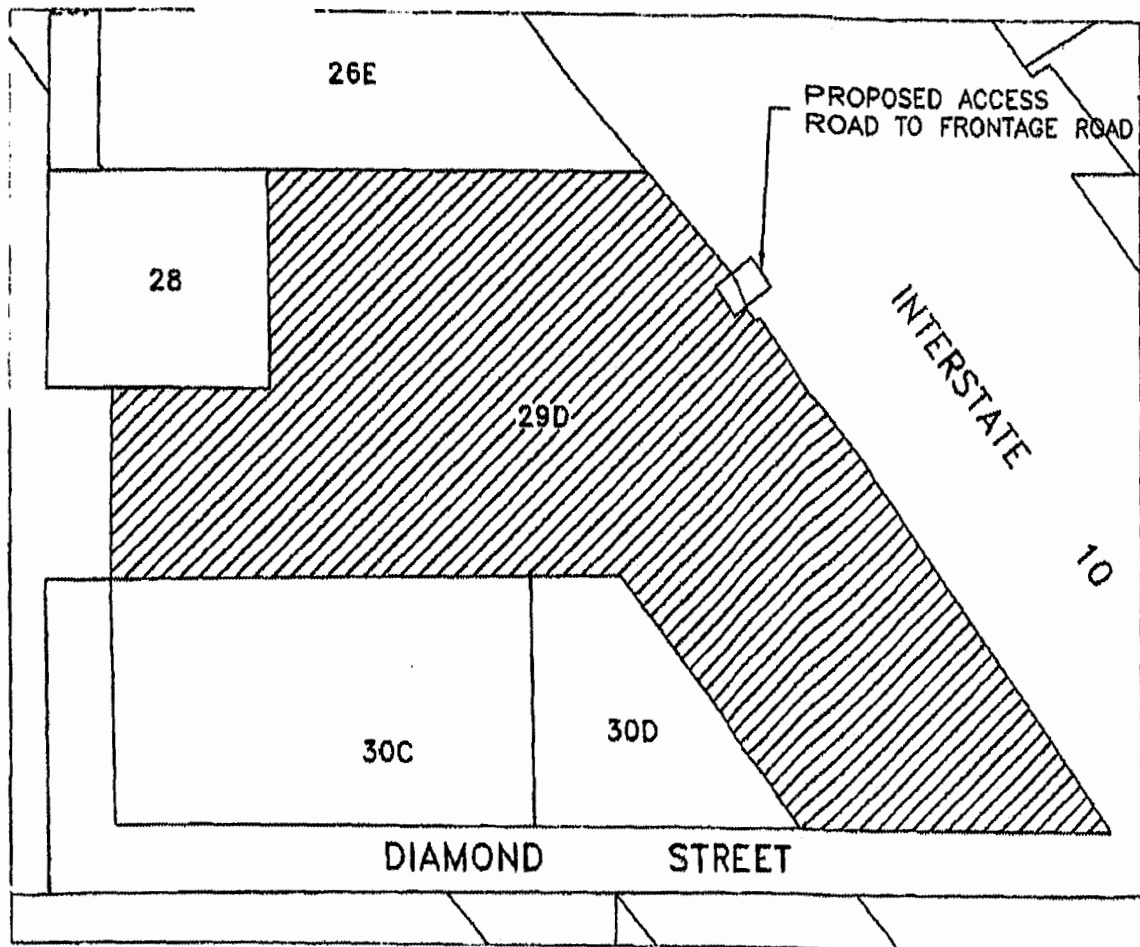
Exhibit "B"

SUBJECT AREA



SECTION 17 GASRM
PIMA COUNTY, ARIZONA

DFA LAND EXCHANGE



PARCEL



101-20-029D



PIMA COUNTY DEPARTMENT OF TRANSPORTATION
ENGINEERING INFORMATION MANAGEMENT

DRAWING NOT TO SCALE

DRAWN BY: BSMITH

DATE: JAN 2015