



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

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: August 17, 2020

\* = Mandatory, information must be provided

or Procurement Director Award ☐

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

RMG Vail II LLC

**\*Project Title/Description:**

Master Wastewater Service Agreement between Pima County and RMG Vail II LLC

**\*Purpose:**

Provides conditions for assurance of capacity for the development of Vail Crossings South, once Sewer Improvements are transferred to the County.

**\*Procurement Method:**

This Agreement is a non-Procurement contract and not subject to Procurement rules.

**\*Program Goals/Predicted Outcomes:**

Applicant designs and constructs 3.6 miles of Sewer Improvements sufficient to provide capacity for the development of Vail Crossings South.

- Within one (1) year, Applicant acquires a Sewer Improvement plan approval and a Construction Authorization from the County.
- Within three (3) years, Applicant builds the Sewer Improvement and acquires a County-signed Notice of Transfer form transferring the Sewer Improvement to the County.

Once the transfer of the Sewer Infrastructure is complete, the Applicant has 10 years to request capacity for the Development.

**\*Public Benefit:**

Provides sewer infrastructure capacity for economic development in the southeast area of the County.

**\*Metrics Available to Measure Performance:**

The conversion of 386,100 gallons per day of sewer capacity into discharging and rate paying customers.

**\*Retroactive:**

No

To: CoB - 8-5-20  
Ver. - 1  
8-5-12 (1)

**Contract / Award Information**

Document Type: CTN Department Code: WW Contract Number (i.e., 15-123): 21\*016  
Commencement Date: 8/17/2020 Termination Date: 8/16/2033 Prior Contract Number (Synergen/CMS): NA  
☐ Expense Amount: \$ \_\_\_\_\_ ☐ Revenue Amount: \$ \_\_\_\_\_

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

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

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

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

Were insurance or indemnity clauses modified? ☐ Yes ☒ No

*If Yes, attach Risk's approval.*

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

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

**Amendment / Revised Award Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_  
Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_  
Commencement Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_  
Prior Contract No. (Synergen/CMS): \_\_\_\_\_

☐ Expense 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): \_\_\_\_\_  
Commencement Date: \_\_\_\_\_ Termination Date: \_\_\_\_\_ Amendment Number: \_\_\_\_\_  
☐ Match Amount: \$ \_\_\_\_\_ ☐ Revenue Amount: \$ \_\_\_\_\_

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

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

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

**\*Funding Source:** \_\_\_\_\_

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

Contact: Eric Wieduwilt, Deputy Director

Department: Regional Wastewater

Telephone: (520) 724-9841

Department Director Signature/Date:  7/30/2020

Deputy County Administrator Signature/Date:  7/30/2020

County Administrator Signature/Date:  7/30/20

(Required for Board Agenda/Addendum Items)

**Master Wastewater Service Agreement  
between**

**Pima County**

**and**

**RMG Vail II LLC**

**For Construction of Improvements to the  
Public Sewage Conveyance System and  
Provision of Wastewater Service**

**CTN-WW-21-016**

**For**

**Vail Crossings**

Master Wastewater Service Agreement  
between  
Pima County  
And  
RMG Vail II, LLC  
for  
Construction of Improvements to the Public Sewage Conveyance System  
and  
Provision of Wastewater Service  
for  
Vail Crossings

This Agreement is made this 17<sup>th</sup> day of August, 2020, between Pima County, a body politic and corporate of the State of Arizona ("County"), on behalf of its Regional Wastewater Reclamation Department ("Department"), and RMG Vail II LLC, a Delaware Limited Liability Company, as owner (hereinafter "Applicant").

Recitals

- A. Applicant is the owner of the property commonly called Vail Crossings South and North, described as portions of Lots 1-5 of Tucson Park No. 1, according to the subdivision plat recorded in Book 14 of Maps and Plats, Page 13, records of Pima County, Arizona (Vail Crossings South); TOGETHER WITH a portion of Lot 1 of Tucson Park No. 2, according to the subdivision plat recorded in Book 14 of Maps and Plats, at Page 47, records of Pima County, Arizona (Vail Crossings North), collectively referred to herein as the "Development", and shown in Exhibits "A" and "B" respectively attached hereto.
- B. The Development is expected to be built in phases over several years and may include an estimated total of 390 acres of industrial, commercial, and/or residential development. In order to achieve this mixture of land uses under the CI-1 zone the Applicant will be required to obtain a Mixed Use Option approval from the Pima County Design Review Committee.
- C. Applicant has agreed to design and construct a 3.6 mile System Improvement of a size sufficient to provide capacity and service as approved by Pima County. When it is completed the Development will provide a unique economic benefit for Pima County.

Agreement

Wherefore, in consideration of the recitals and the mutual covenants, terms and conditions in this Agreement, the parties agree as follows:

1. **Definitions.**

- a. Public Sewage Conveyance System means public gravity or pressure sewers, manholes and other access structures, chemical feed stations, flow metering stations, pumping facilities, treatment facilities, and other appurtenances that are or will be owned and operated by Pima County.
- b. Qualifying System Improvement means an Off-site System Improvement constructed by the Applicant that is capable of serving other downstream properties in addition to the Area Under Development.
- c. System Improvement means new Sewage conveyance components that are owned, designed, permitted, constructed, and tested by a third party and which are intended for Transfer to County ownership.
- d. Allocation of Capacity means the assignment of treatment and conveyance capacity for the design discharge from the Development.
- e. Definitions of other terms used in this Agreement will have the same meaning as provided in Pima County Code Title 13, Chapter 20.

2. **Components of Required Construction** Applicant will construct, at Applicant's expense, a System Improvement as approved by the Department and in accordance with the most current version of the Department's Engineering Design Standards and Standard Specifications and Details for Construction.

The System Improvement will be constructed to provide conveyance capacity and service to the Vail Crossings South portion of the Development and tributary areas as approved by Pima County. Connection will be made to the existing Public Sewage Conveyance System in Mary Ann Cleveland Way at Manhole 3625-23 (Contract G-2004-174) or at an upstream manhole constructed by others that is tributary to Manhole 3625-23. Construction to provide conveyance capacity and service to Vail Crossings North may be completed as a separate System Improvement or contained within the Vail Crossings South System Improvement.

3. **County Wastewater Collection and Treatment Capacity.**

- a. The County will allocate 386,100 gallons per day (Average Dry Weather Flow) of treatment and conveyance capacity for the Development in the downstream system for a period of ten (10) years, contingent upon completion of the performance milestones listed in 3.c. This Allocation of Capacity will be divided between Vail Crossings South at 288,100 gpd-ADWF and Vail Crossings North at 98,000 gpd-ADWF and cannot be transferred.

- b. This Allocation of Capacity is based on a maximum of 584 residential dwelling units, an estimated maximum 240 acres of industrial/commercial development, an estimated 4 acres of restaurant use for the South parcel, and an estimated 98 acres of industrial/commercial for the North parcel. The Development treatment and conveyance capacity is identified in the Rick Engineering 2019 Vail Crossings Basin Study.
- c. This Allocation of Capacity is contingent upon the Applicant reaching the Milestones within the prescribed time as described in this Section and pursuant to Section 7 (Term of Agreement and Cancellation).
  - i. Milestone: Within one (1) year from the approval date of this Agreement, Applicant shall acquire a Vail Crossings South Sewer Improvement plan approval and an issued Construction Authorization from Pima County, as delegated by Arizona Department of Environmental Quality.
  - ii. Milestone: Within three (3) years from the approval date of this Agreement, Applicant shall acquire a County-signed ADEQ 4.01 Notice of Transfer form that approves the transfer of the constructed off-site System Improvement serving Vail Crossings South Development to the County.
- d. If the Milestones are met, this Allocation of Capacity for the Development will be allocated over a term of ten (10) years from the date of the signed 4.01 Notice of Transfer to the County of the System Improvement. Allocation of discharge capacity is made at the time of building permit issuance for commercial development or Construction Authorization for residential sewer development, provided the projects finalize construction within two (2) years. After the ten (10) year period, all remaining allocated treatment and conveyance capacity that has not been converted to discharge capacity will be voided and released.
- e. Both Milestones (3.c.i and 3.c.ii) will be extended for a number of days equal to the number of business days that the design submittal reviews by the County exceeds a 10-business day review period.
- f. Allocation of treatment and conveyance capacity amounts outside of this Agreement will be based on the Department's first-come, first-served treatment and conveyance capacity allocation process.
- g. Applicant acknowledges that treatment capacity availability may delay release of any constructed sewers for HCS connection and use. Applicant will hold the County harmless for any costs incurred by Applicant if release of constructed sewers is delayed due to lack of system-wide or basin-wide treatment capacity, so long as County uses reasonable efforts to meet future capacity needs.

4. **Credit and Discount Agreements.** If the County requires Applicant to over-size or deepen the System Improvement design, then, upon Transfer of the Applicant-constructed System Improvement to the County, Applicant and the County shall enter into a credit agreement pursuant to the provisions of County Code Section 13.20.250. Notwithstanding the foregoing, this Agreement does not require the Applicant to augment the System Improvement. Furthermore, upon County approval of the System Improvement plans, the County and Applicant shall enter into a Wastewater Service Agreement which shall address qualifying Wastewater Utility Fee Discounts pursuant to the provisions of County Code Section 13.20.250(C)(4) at time of approval.
5. **Funding of Acquisition Expenses.** Applicant shall secure necessary sewer easements from third parties and shall be responsible for all costs of acquisition and applications for the System Improvements. In this regard Applicant shall coordinate all easement acquisitions with the County's Real Property Services Division to provide guidance and approval for the required acquisitions or easement applications.
6. **Indemnification**
  - a. Indemnity. Applicant will indemnify, defend, and hold harmless Pima County, its officers, departments, employees, and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands, or damages of any kind or nature which arise out of this Agreement but only to the extent caused by any act or omission of Applicant, its agents, employees, or anyone acting under its direction, control, or on its behalf unless due solely to County negligence.
  - b. Preexisting Environmental Conditions. To the fullest extent permitted by law, Applicant shall indemnify, defend, and hold harmless Pima County, its officers, departments, employees, and agents from and against any claims and damages resulting from or arising out of the existence of any substance, material, or waste, regulated pursuant to federal, state, or local environmental laws, regulations, or ordinances, that is present on, in, below, or originates from property owned or controlled by Applicant prior to the execution of this Agreement.
  - c. Survival of Termination. This section shall survive the termination, cancellation, or revocation, whether in whole or in part, of this Agreement.
7. **Term of Agreement and Cancellation**
  - a. Term of Agreement. The term of this Agreement (except for those sections relating to provision of County sewer collection and treatment service and

to indemnification) shall not exceed thirteen (13) years from its effective date, as outlined in Section 3. The Agreement may be extended for one (1) additional five (5) year period by mutual written agreement. The Pima County Procurement Director is hereby authorized to execute such a term extension agreement on behalf of the County.

- b. Cancellation for Failure to Construct. In the event Applicant does not complete construction of the System Improvements prior to three (3) years from the effective date of this Agreement, this Agreement shall be null and void, canceled, and of no further force and effect. The parties may agree to extend the time of completion and related Milestone (3.c.ii) only by a written amendment signed by the parties.
- c. Remedy of County. Notwithstanding anything to the contrary contained in this Agreement, in the event Applicant does not complete the System Improvement, termination of this Agreement shall be the sole and exclusive remedy of County, and in no event shall County have the right to seek specific performance of Applicant's obligations hereunder with respect to construction of the System Improvement nor shall it have the right to seek monetary damages arising from Applicant's failure to timely construct any portion of the System Improvement.
- d. Cancellation for Conflict. This Agreement is subject to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.
- e. Non-Appropriation. Notwithstanding any other provision in this Agreement, this Agreement may be terminated if the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Agreement, except this clause does not apply to the administrative allocation of capacity as set forth in section 3 of this Agreement. In the event of such cancellation, the parties will have no further obligations under this Agreement.

## 8. **Construction of Agreement**

- a. Entire Agreement. This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.
- b. Amendment. The parties may modify, amend, alter or extend this Agreement only by a written amendment signed by the parties.



- c. Negotiation. This Agreement has been arrived at by negotiation and shall not be construed against the party who prepared the last draft.
  - d. Intentions. All provisions of this Agreement shall be construed to be consistent with the intention of the parties as expressed in the recitals hereof.
  - e. Captions and Headings. Captions and headings used in this Agreement are for convenience only and are not intended to affect the meaning of any provision of this Agreement.
  - f. Severability. If any provision of this Agreement, or any application of a provision to the parties or any person or circumstance, is found by a court to be invalid, that invalidity will not affect other provisions or applications of this Agreement that can be given effect without the invalid provision or application.
  - g. Governing Law. This Agreement is entered into under and shall be governed by the laws of the State of Arizona and any action concerning this Agreement will be brought in a State of Arizona court in Pima County.
  - h. Force Majeure. Except as otherwise expressly provided in this Agreement, if any act required to be performed by the Applicant, the County, or the Department, is prevented or delayed by reason of an act of God, strike, lockout, labor trouble, acts of terrorism or war, regional disruptions in the delivery or ability to secure materials necessary to complete the System Improvements, or permit delays beyond statutory or reasonable industry-specific response times (other than any delay due to Applicant's failure to timely submit permit applications or information necessary for permit consideration), the time for performance of the act will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused.
9. **Compliance with Laws** The parties shall comply with all applicable federal, state, and local laws, rules, regulations, standards, and executive orders, without limitation to those designated within this Agreement.
- a. Anti-Discrimination. The provisions of Executive Order Number 2009-09 issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Agreement.
  - b. Americans with Disabilities Act. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR. Parts 35 and 36.

10. **No Third Party Beneficiaries.** Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement. This Agreement shall not create any right to any person or entity as a third party beneficiary.
11. **Waiver.** Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
12. **Remedies.** Except as otherwise provided herein, either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy 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 existing at law or in equity or by virtue of this Agreement.
13. **Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of successors and assigns of the parties. Applicant may not assign this Agreement without prior written approval by County, which approval shall not be unreasonably withheld.
14. **Notice.** All notices, demands, instructions, approvals or other communications required or permitted to be given hereunder shall be in writing and shall become effective seventy-two (72) hours after such are deposited in the United States mail, certified, postage prepaid, addressed as shown below, or to such other address as either party hereto may from time to time designate in writing:

To Applicant:  
RMG Vail II LLC  
2441 N. Leavitt Street  
Chicago, IL 60647

To County:  
Jackson Jenkins, Director  
Pima County Regional Wastewater  
Reclamation Department  
201 N. Stone Ave., 8th floor  
Tucson, Arizona 85701-1207

15. **Legal Arizona Workers Act Compliance.**

- a. Compliance with Immigration Laws. Applicant hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Applicant will further ensure that each subcontractor who performs any work for Applicant under this Agreement likewise complies with the State and Federal Immigration Laws.

- b. Books & Records. County has the right at any time to inspect the books and records of Applicant and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.
  - c. Remedies for Breach of Warranty. Any breach of Applicant's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Agreement subjecting Applicant to penalties up to and including suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Applicant will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Applicant.
  - d. Subcontractors. Applicant will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section 16 by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to ensure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."
16. **Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Applicant engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of \$100,000.00 or more, Applicant certifies it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

In Witness Whereof, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year last written below.

**RMG VAIL II LLC,**  
a Delaware limited liability company

By:

Sheldon J. Mandell  
Sheldon J. Mandell, its Manager

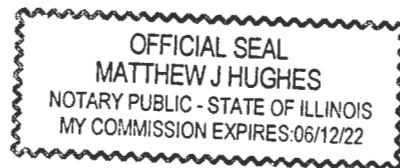
STATE OF ILLINOIS     )  
                                          ) ss.  
County of Cook         )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of July, 2020, by Sheldon J. Mandell the Manager of RMG Vail II LLC, a Delaware limited liability company.

Matthew J. Hughes  
Notary Public

PIMA COUNTY

\_\_\_\_\_  
Chairman, Board of Supervisors



ATTEST.

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

Date: \_\_\_\_\_

APPROVED AS TO CONTENT:

Jackson Jenkins  
Jackson Jenkins, Director  
Regional Wastewater Reclamation

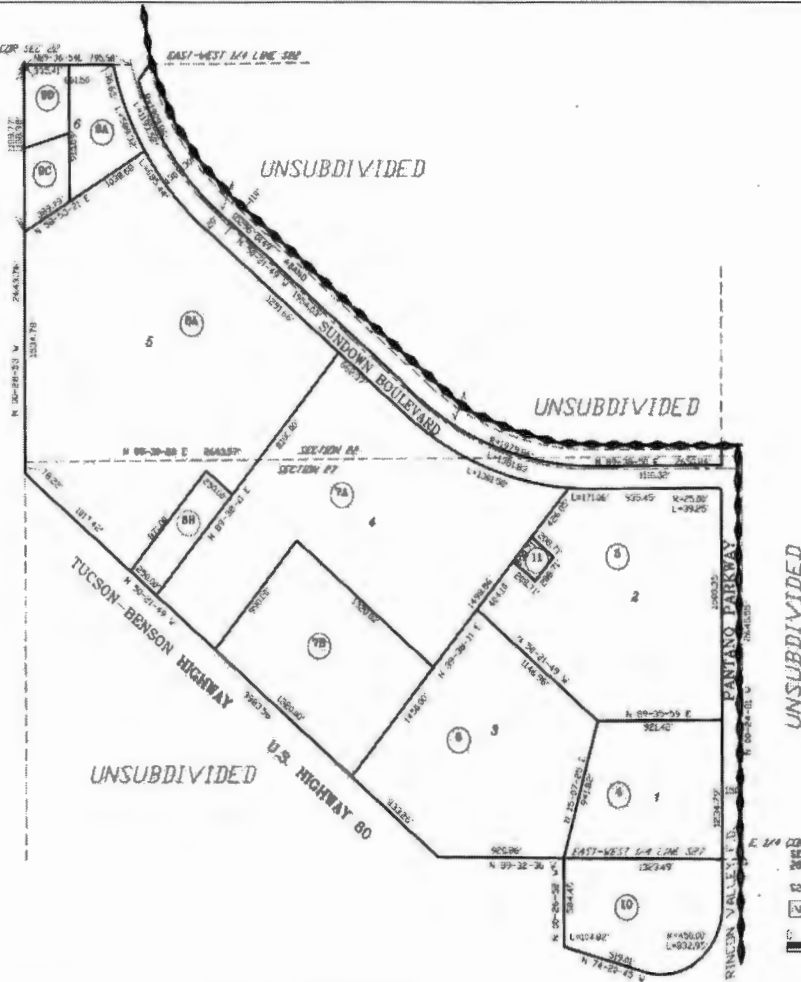
APPROVED AS TO FORM:

Victoria Boudinger  
Deputy County Attorney

Date: July 30, 2020

ASSESSOR'S RECORD MAP  
305-14 TUCSON PARK No. 1

UNSUBDIVIDED

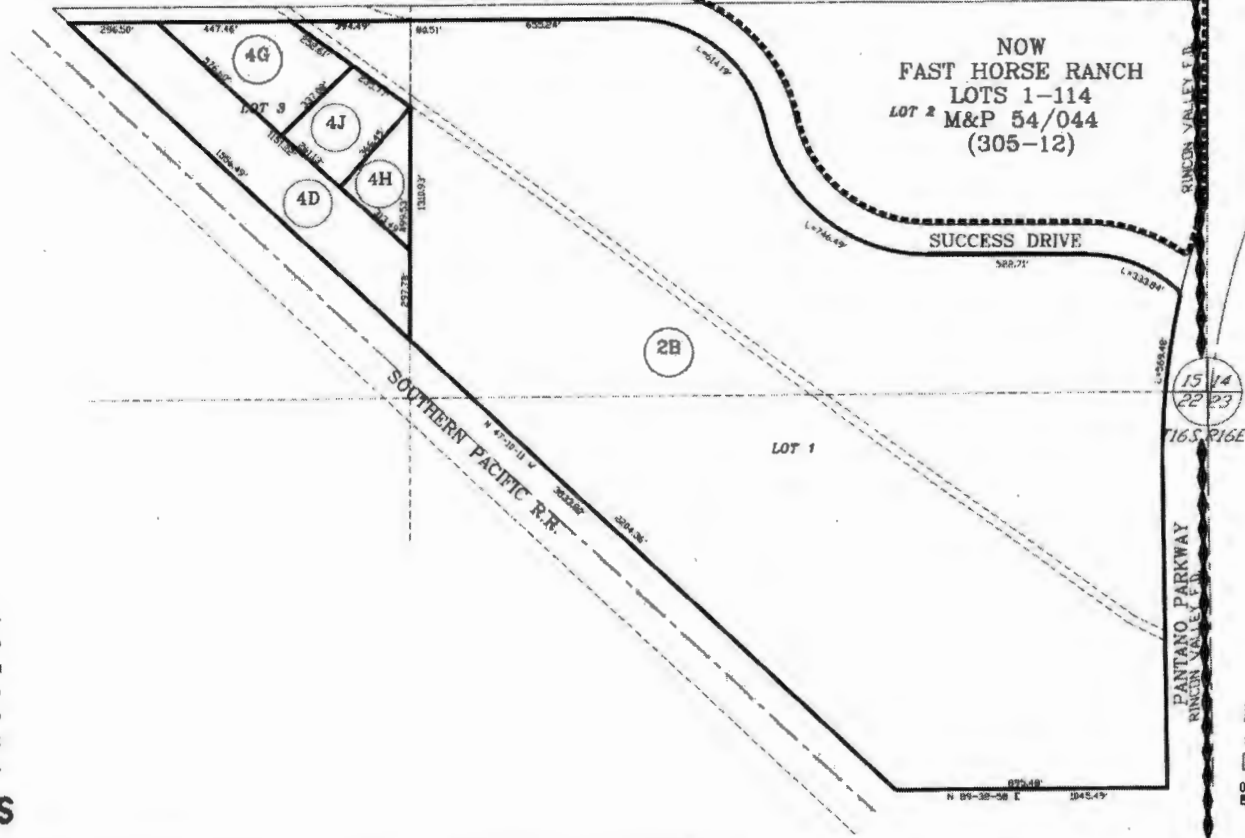


CCS

Exhibit A  
Vail Crossings South

ASSESSOR'S RECORD MAP  
TUCSON PARK No. 2

305-15



SEE BOOK 14 PAGE 057 M&P  
2082-1  
S15 & S28, T16S, R16E  
[M&P] 414047- 01/05/08  
0 150 300 450 600  
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2448 (5)

Exhibit B  
Vail Crossings North

C.O.T.  
PROJECT  
CCS