



Board of Supervisors Memorandum

April 9, 2013

Marana Wastewater Litigation Settlement

Background and History

The purpose of this memorandum is to provide the Board of Supervisors an updated chronology of the wastewater litigation and proposed settlement agreement between the County and the Town of Marana.

On July 11, 2007, Marana rescinded the 1979 intergovernmental agreement (IGA) with Pima County that allowed the County to provide wastewater services to the Town.

On October 17, 2007, Marana filed a lawsuit against Pima County claiming their right to own and control more wastewater facilities within the Town than to which they were entitled by the 1979 IGA. In addition, they claimed ownership of the Marana Wastewater Reclamation Facility (MWRF), which lies outside the Town boundaries. This litigation was transferred to Maricopa Superior Court on January 14, 2008, and a trial was conducted.

On March 4, 2010, Judge Kenneth Mangum ruled that: 1) Marana was limited to ownership of the conveyance system to only a limited number of facilities; and 2) Marana was not entitled to own or control the MWRF. Judge Mangum also awarded Pima County attorneys' fees of \$170,282.10. A previous Maricopa Superior Court judge ruled that Marana had the right to operate a sewer system, contrary to what the County asserted.

Both sides appealed their respective issues to the Arizona Court of Appeals. On August 2, 2012, the Court of Appeals ruled in favor of Pima County on the lower court's decisions regarding ownership of the MWRF and the flow-through portions of the conveyance system. It overruled the lower court's decision on the adequacy of the Town's 1988 election question regarding entering the wastewater treatment business. The Court of Appeals also upheld the Superior Court's award of attorneys' fees.

On August 14, 2012, Marana petitioned the Arizona Supreme Court to hear the issues and to reverse the award of attorneys' fees. On December 4, 2012, the Arizona Supreme Court denied Marana's petition for review.

On December 11, 2012, Pima County received Marana's check in the amount of \$203,725.50 for attorneys' fees, plus interest thereon, for this litigation.

The Honorable Chairman and Members, Pima County Board of Supervisors
Re: **Marana Wastewater Litigation Settlement Status**
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On December 18, 2012, at the direction of the Board, I transmitted two settlement options to the Marana Town Manager.

On December 27, 2012, the Marana Town Council authorized negotiations with Pima County to pursue Settlement Option A.

On January 7, 2013, County staff met with Town representatives to clarify several issues regarding Settlement Option A and agreed at that time that the Pima County Attorney would prepare a draft settlement agreement.

A draft settlement agreement was transmitted to the Marana Town Attorney on January 14, 2013. Following several reviews, the attached final draft settlement agreement was achieved.

On March 12, 2013, Marana voters authorized the town to acquire and operate the County's MWRf. Voters also authorized the Town to acquire and operate the County's Rillito Vista Wastewater Reclamation Facility.

Finally, on March 28, 2013, the Governor signed legislation repealing Senate Bills (SBs) 1171 and 1532. SB 1171 had authorized Marana to take possession of the MWRf. SB 1532 required the Arizona Department of Environmental Quality to transfer the County's operating permits to the Town.

Recommendation

I recommend the Board of Supervisors approve the proposed settlement agreement with the Town of Marana to resolve outstanding wastewater facilities litigation.

Respectfully submitted,



C.H. Huckelberry
County Administrator

CHH/mjk – April 5, 2013

c: John Bernal, Deputy County Administrator for Public Works
Chris Straub, Chief Civil Deputy County Attorney
Charles Wesselhoft, Deputy County Attorney
Jackson Jenkins, Director, Regional Wastewater Reclamation

INTERGOVERNMENTAL SETTLEMENT AGREEMENT BETWEEN
PIMA COUNTY AND THE TOWN OF MARANA
RELATING TO THE PROVISION OF SEWER
SERVICE

This Intergovernmental Settlement Agreement (this “IGA”) is entered into by and between Pima County, a body politic and corporate of the State of Arizona (the “County”) and the Town of Marana, a municipal corporation (the “Town”) pursuant to A.R.S. § 11-952. The County and Town are sometimes referred to collectively in this IGA as the “Parties” or singly as a “Party.”

Recitals

- A. The County and the Town may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951, et seq.
- B. The County owns and operates certain wastewater reclamation facilities located in Pima County pursuant to authority granted under A.R.S. § 11-264, including the Rillito Vista Wastewater Reclamation Facility (the “RVWRF”), located at 8969 West Robinson Street, Rillito, Arizona; and the Ina Road Wastewater Reclamation Facility (the “IRWRF”), located at 7101 North Casa Grande Highway, Tucson, Arizona.
- C. Through January 2, 2012, the County also owned and operated the Marana Wastewater Reclamation Facility (the “MWRF”), located at 14393 North Lockett Road, Marana, Arizona.
- D. Current ownership of the MWRF is disputed.
- E. The County leases the land on which the RVWRF is situated from Arizona Portland Cement Company, an Arizona corporation (“Landlord”), pursuant to that certain lease attached to this IGA as Exhibit 1 dated June 23, 2005 and renewed June 30, 2010 (the “RVWRF Lease”).
- F. The County is the wastewater management agency identified in the Pima Association of Governments’ “March 2006 Areawide Water Quality Management Plan” (the “PAG 208 Plan”) as the Designated Management Agency (“DMA”) for all areas of Pima County, excluding tribal lands and excluding the area identified in the PAG 208 Plan as the Town of Sahuarita Designated Management Area.
- G. The County is subject to two Intergovernmental Agreements with the City of Tucson (the “City”) that define control of effluent produced at County wastewater treatment facilities as between the County and the City.
- H. In 1979, the City and County entered into an Intergovernmental Agreement (the “City/County IGA”), the adopting resolution thereto recorded in the office of the Pima County Recorder on July 2, 1979, at Docket 6061, Page 920, requiring, in relevant part, that:

. . . all effluent from the County sewer treatment plants may be used by the City to settle or satisfy litigation relative to water rights pending with the City at the time of closing. In the event all the effluent is not required to settlement or satisfy litigation, City and County agree that the effluent that is required for settlement will be provided by the City and County on a pro-rata basis with each providing an equal proportion from the total effluent controlled by each.

City/County IGA, at Art. III, Sec. B.

- I. Pending at effective date of the City/County IGA was litigation between the City, *et al.*, and the United States, acting as trustee for the Papago Indian Tribe, concerning alleged over-pumping of groundwater in southern Arizona. *United States v. City of Tucson*, D. Arizona, Case No. CIV. 75-39.
- J. Settlement of this litigation was legislatively approved in the Southern Arizona Water Rights Settlement Act of 1982 (SAWRSA), October 12, 1982, Public Law 97-293, 96 Stat. 1274, *et seq.*
- K. As a condition of SAWRSA, the City, on October 11, 1983, entered into agreement with the United States wherein the City agreed to assign and convey 28,200 acre feet of effluent per year to the United States Department of the Interior.
- L. The City and County entered into a second Intergovernmental Agreement (the “Supplemental IGA”), recorded in the office of the Pima County Recorder on March 14, 2000, at Docket 11254, Page 1533, that, in pertinent part, defines “SAWRSA Effluent” as “the 28,200 acre feet, plus losses, of annual effluent entitlement which the City assigned and conveyed to the United States by contract dated October 11, 1983, pursuant to the provisions of the Southern Arizona Water Rights Settlement Act.” Supplemental IGA, Sec. 3.12.
- M. The County provided sewer service to the Town pursuant to an intergovernmental agreement between the County and the Town recorded in the office of the Pima County Recorder on August 10, 1979, at Docket 6089, Page 777 (the “1979 IGA”).
- N. By letter dated July 11, 2007, the Town terminated the 1979 Marana/County IGA effective January 11, 2008.
- O. On October 17, 2007, the Town filed a declaratory judgment lawsuit against the County (Pima County Superior Court case no. C20076038), seeking a determination of the rights of the Parties upon termination of the 1979 IGA. On December 20, 2007, the County filed a declaratory judgment lawsuit against the Town (Pima County Superior Court case no. C20077448), seeking a declaration that the Town’s annexation of the MWRF was invalid. Venue was changed to Maricopa County and the cases were consolidated as Town of Marana v. Pima County, Maricopa County Superior Court case no. CV 2008-001131, (the “Marana I Case”).
- P. Final judgment in the Marana I Case was entered on May 2, 2011. Significant rulings from the Marana I Case include:
 - 1. The Town’s 1988 election met the requirements of A.R.S. § 9-514. (October 9, 2008 Judgment.)
 - 2. The Town has the authority pursuant to ARS § 9-240(b)(5)(a) to operate a sewer system, including the collection, transportation, treatment, and disposal of sewage. (October 9, 2008 Judgment.)
 - 3. The County derived its authority to provide sewer service in Marana through the 1979 IGA. Without a valid IGA, the County does not have the authority to provide sewer service within Marana without the Town’s consent. (October 9, 2008 Judgment.)

4. The Town is entitled to own the non-flow-through sewer system in Marana, and the County is entitled to retain ownership of the flow-through sewer system in Marana. (October 9, 2008 Judgment.)
 5. The flow-through sewers in Marana are the sewer reaches depicted as flow through sewer lines on County maps 1 and 2 (Hearing Exhibits 5 & 6). (March 4, 2010 Ruling, Finding 182.)
 6. The non-flow through sewers in Marana are all other sewers within the jurisdictional limits of Marana, including all of the sewers tributary to the MWRF.
 7. Upon compliance with all applicable regulatory requirements necessary for it to operate a wastewater conveyance system and all proper and necessary arrangements having been made for discharge of sewage into a wastewater treatment facility, the Town is entitled to receive all of the non-flow through sewers in Marana. (March 4, 2010 Ruling, Finding 183.)
 8. The County is entitled to retain ownership of the MWRF. (June 7, 2010 Ruling, Finding 235.)
- Q. Laws 2011, Ch. 146 (“SB 1171”) was passed by the Arizona Legislature on April 12 and signed by the Governor on April 18, 2011. SB1171 allows an Arizona municipality to take ownership of certain county-owned sewer and wastewater facilities that serve the municipality provided the municipality’s voters have authorized the acquisition pursuant to A.R.S. § 9-514 and the acquiring municipality pays all outstanding indebtedness attributable to the acquired infrastructure.
- R. In May 2011, the Town and the County both appealed the decision of the superior court in the Marana I Case, and the consolidated appeals were titled Town of Marana v. Pima County, Arizona Court of Appeals, Division One, CV 2008-001131 (the “Marana I Appeal”).
- S. On July 20, 2011, SB 1171 became effective and the Town served County with a letter requesting the January 3, 2012 transfer pursuant to SB 1171 of the MWRF and the wastewater system tributary to it.
- T. On August 19, 2011, the County filed a lawsuit challenging the constitutionality of SB 1171 in Pima County v. Town of Marana (Pima County Superior Court case no. C20116094). The Town filed a counterclaim seeking a writ of mandamus to force County to transfer the facilities and to provide additional financial data concerning the outstanding debt related to the MWRF. Venue of the case was transferred to Maricopa County, and the litigation is currently pending as Maricopa County Superior Court case no. CV 2011-099966 (the “Marana II Case”). The court has made no substantive decisions in the Marana II Case.
- U. Pursuant to SB 1171 the Town took possession of the MWRF on January 3, 2012 and has since that date operated it and collected and retained all fees from customers served by the MWRF.
- V. To date, the County has not consented to the transfer of the MWRF’s operating permits to the Town.
- W. On January 3, 2012, the Town and the Arizona Department of Environmental Quality (“ADEQ”) entered into a consent order (ADEQ Director’s Docket No. P-01-12) relating to the Town’s operation of the MWRF. The consent order was amended on April 12, 2012 to expand the Town’s available sludge handling options.

- X. In response to the County's refusal to transfer the MWRF operating permits to the Town, the Arizona Legislature passed Laws 2012, Ch. 303 (SB 1532) which, in part, requires ADEQ to immediately transfer operating permits to a municipality that acquired a wastewater utility pursuant to SB 1171.
- Y. On June 14, 2012, the Arizona Court of Appeals issued its opinion in the Marana I Appeal. *Town of Marana v. Pima County*, 230 Ariz. 142 (Div. 1, 2012). The opinion reversed the superior court's ruling that the 1988 Town voter authorization election satisfied the requirements of A.R.S. § 9-514, and instead held that the 1988 voter authorization did not sufficiently identify the facilities being acquired to satisfy A.R.S. § 9-514. The opinion upheld the remainder of the superior court decision.
- Z. SB 1532 became effective on August 2, 2012. To date, ADEQ has not transferred operating permits to the Town.
- AA. On December 4, 2012, the Arizona Supreme Court denied review of the Arizona Court of Appeals opinion in the Marana I Appeal, and the final judgment entered on May 2, 2011 in the Marana I Case, as modified by the Court of Appeals opinion, is now final.
- BB. On December 10, 2012, the Town delivered a check to the County, satisfying the monetary portion of the final judgment entered on May 2, 2011 in the Marana I Case.
- CC. On December 18, 2012, the County requested in a settlement offer (now consummated by this IGA) that if the Town were to operate the MWRF that it also take over ownership and operation of the RVWRF and its service area, located adjacent to the MWRF service area and many miles distant from the IRWRF service area.
- DD. The Town placed two questions on the Town's regularly scheduled March 12, 2013 primary election ballot seeking voter authorization of Town's acquisition of the MWRF and the RVWRF, and both measures passed.
- EE. The Parties desire a settlement where all remaining litigation issues are resolved, the Town has undisputed ownership and operation of the MWRF, and designated management areas for each party within Pima County are clearly defined and established on a long-term basis, allowing the Parties to make and honor necessary long-term financing commitments related to their respective wastewater facilities.
- FF. At the Town's request and in anticipation of the settlement consummated by this IGA, HB2492 was introduced in the 2013 legislative session. HB2492 was passed by the Arizona Legislature and signed by the Governor on March 28. HB2492 repeals SB1171 and the portion of SB1532 relating to wastewater facility permits, conditioned upon the Parties entering into the settlement consummated by this IGA and effective upon the Parties notifying legislative counsel that they have reached a settlement.
- GG. The County Board of Supervisors, in approving this IGA, has determined that the County wastewater assets subject to transfer to the Town under the terms of this IGA are inexpedient for use in connection with the County's remaining wastewater system.

NOW, THEREFORE, the County and the Town, pursuant to the foregoing recitals, which are incorporated into and are deemed part of this IGA, mutually agree as follows:

Agreement

1. **Purpose.** This IGA is intended to resolve all outstanding litigation between the Parties related to wastewater management within the Marana area and to define each Party's role in managing wastewater generated within the Marana area.
2. **Effective Date.** This IGA will be effective on the date it is fully executed by both Parties (the "Effective Date").
3. **Marana II Case.** Within five business days after the Effective Date the Parties will file a joint motion to place the Marana II Case on the Court's inactive calendar. All other actions, including discovery and disclosure requests and obligations will be suspended pending Close of Escrow (see paragraph 10 below). Within five business days following Close of Escrow, the Parties will file a joint motion to dismiss the Marana II Case, with each party bearing its own costs and attorneys' fees. If this IGA terminates by virtue of Close of Escrow not occurring on or before December 31, 2014 (see paragraph 4.1 below), either Party may request removal of the Marana II Case from the inactive calendar.
4. **Term.**
 - 4.1. This IGA will terminate at 5 p.m. Mountain Standard Time on December 31, 2014 if Close of Escrow does not occur on or before that date and time.
 - 4.2. This IGA will remain in full force and effect until the 50th anniversary of the Effective Date of this IGA unless terminated sooner pursuant to Section 4.1 above.
5. **Notice to Legislative Counsel.** Within five business days following the Effective Date of this IGA, the Parties will notify the Arizona legislative counsel that the Parties have reached a settlement conditioned upon the repeal of SB1171 and that portion of SB1532 relating to wastewater facility permits.
6. **Escrow.** At any time but not later than five calendar days after the Effective Date of this IGA, the Parties will open escrow ("Escrow") with Fidelity National Title Company, Inc., 6245 East Broadway, Suite 200, Tucson AZ 85711, attention Judy Kaiser (the "Escrow Officer"). The Town will pay all escrow fees and any costs of title insurance the Town chooses to obtain for facilities and properties which are the subject of this IGA.
7. **Conveyance of the MWRF and RVWRF.** Within 20 calendar days after the Effective Date of this IGA, the County will deliver into Escrow the following documentation relating to conveyance to the Town of: (1) the MWRF and its associated lands and property rights (fee title to Parcels 1 and 2, and easements over Parcels 3 and 4, as described and depicted in Exhibit 2); and (2) the RVWRF and the wastewater assets located at or tributary to it:
 - 7.1. A special warranty deed for the MWRF and its associated lands in the form attached to this IGA as Exhibit 3.
 - 7.2. An assignment/assumption agreement assigning to the Town any waivers from neighboring landowners that benefit the operation of the MWRF (including an assignment of the waiver provided by the City of Tucson with respect to a parcel of property at the southeast corner of Parcel 2).

- 7.3. A quit claim deed relinquishing to the Town all County wastewater assets tributary to the MWRP.
- 7.4. An assignment/assumption agreement assigning the County's interest in the RVWRF Lease to Town (the "Lease Assignment"), together with the Landlord's consent to the assignment.
- 7.5. A quit-claim deed relinquishing to Town all the County's interest in any wastewater assets located at or tributary to the RVWRF.

The conveyance of Parcel 2 is being made subject to the rights of the tenants under two existing leases affecting Parcel 2, copies of which have been provided to the Town.

8. **Town Quit Claim of Wastewater Facilities in County DMA Area.** Within 20 days after the Effective Date of this IGA, the Town will deliver into Escrow a quit claim deed relinquishing to the County the Town's interest in any wastewater assets located within the area depicted in Exhibit 4 as the County DMA.
9. **System Purchase Amount.** Within 90 calendar days after the County delivers into Escrow the documentation described in paragraph 7, the Town will deliver into Escrow immediately available funds in equal to the sum of the following:
 - 9.1. \$779,255 (being the \$825,255 paid by the County on July 1, 2012 according to the debt schedule attached as Exhibit 5 minus the \$46,000 the Town paid to the County by letter dated January 10, 2012), plus interest at one percent plus the prime rate from July 1, 2012 through Close of Escrow, unless such amount was previously paid by the Town as set forth in paragraph 12 below.
 - 9.2. \$272,357 plus interest at one percent plus the prime rate from January 1, 2013 through Close of Escrow, unless such amount was previously paid by the Town as set forth in paragraph 12 below.
 - 9.3. The amount of any debt service payment made by the County between January 1, 2013 and Close of Escrow with respect to the debt obligations listed on Exhibit 5, plus interest at one percent plus the prime rate from the date of each such payment through Close of Escrow, unless such amount was previously paid by the Town as set forth in paragraph 12 below.
 - 9.4. An amount that would, if invested as of Close of Escrow in a defeasance trust, be sufficient to pay, in a timely manner, all principal and interest payments for the debt obligations listed on Exhibit 5 that come due on and after Close of Escrow, assuming that the outstanding principal amount of each such obligation will be paid in full on the first available early redemption date set forth on Exhibit 5. This amount will be calculated assuming that the trust would be funded with state and local government securities (SLGS) with appropriate maturity dates (given the debt service payment dates listed on Exhibit 5) that generate the yields published for such SLGS by the U.S. Department of the Treasury for the date that is one week prior to Close of Escrow (<https://www.treasurydirect.gov/GA-SL/SLGS/selectSLGSDate.htm>).
10. **Close of Escrow.** The day the Town delivers into Escrow the System Purchase Amount described in paragraph 9 above is the "Close of Escrow." On the Close of Escrow, the Escrow Officer will:
 - 10.1. Release to the order of the Finance Director of Pima County the System Purchase Amount described in paragraph 9 above; and

- 10.2. Record in the office of the Pima County Recorder the documentation described in paragraph 7 above relating to the conveyance of the MWRF and its associated lands and property rights and to the conveyance of the RVWRF and the wastewater assets located at or tributary to it; and
- 10.3. Record in the office of the Pima County Recorder the documentation described in paragraph 8 above relating to the Town's quit claim deed for assets located in the County DMA area.
- 11. MWRF Permits.** Not later than one calendar week after Close of Escrow, the County will execute any and all documentation necessary to request, consent, and/or confirm ADEQ's transfer of the County's MWRF and RVWRF operating permits to the Town.
- 12. Option to Prepay Some of the System Purchase Amount.** The Town will have the right, but not the obligation, to pay to the County any or all of the amounts set forth in subparagraphs 9.1, 9.2, and 9.3, at any time prior to the Close of Escrow. If the Town elects to pay such amount, the Town will be obligated to pay interest on that amount only through the date of payment rather than through the Close of Escrow, and any such amount will not be included in the calculation of the System Purchase Amount (paragraph 9 above) at closing.
- 13. Operation and Ownership of the RVWRF.** The Town will take over the full rights and responsibilities for the ownership and operation of the RVWRF from and after the Close of Escrow.
- 14. Reciprocal Right-of-Way Licenses.** Not later than 30 days after Close of Escrow, each party will grant and deliver to the other Party a right-of-way license agreement, in the form attached as Exhibit 6, pursuant to which each Party will grant a license to the other to install, extend, enlarge and maintain sewage conveyance system infrastructure within public rights-of-way controlled by the Party granting the right-of-way license.
- 15. Post-Closing Obligations.** The Parties have the following continuing obligations after Close of Escrow and during the Term of this IGA:
- 15.1. Annexation. The County will, if requested by Town, consent to annexation of Parcels 1 and 2, described and depicted on Exhibit 2, into the jurisdictional limits of the Town.
- 15.2. PAG 208 Plan Amendment. The County will cooperate with and support the Town in its efforts to obtain an amendment to the PAG 208 Plan designating the Town as the Designated Management Agency for those areas identified on Exhibit 4 as the Town's DMA.
- 15.3. Provision of Sewer Service; Management Areas.
- 15.3.1. County. The County will provide sewerage conveyance and treatment service to all properties within the area depicted in Exhibit 4 as the County DMA based on specific land uses and densities approved by the Town, subject only to available conveyance and treatment capacity. The County is and will remain the Designated Management Agency for all areas of Pima County except those areas identified on Exhibit 4 as the Town's DMA and will provide sewage treatment and conveyance services to new and existing customers within all areas of the Town where it remains the Designated Management Agency. The County will set and collect sewer connection and user fees for customers served by the County, including those County customers located within the current and future jurisdictional limits of the Town, either itself or through a separate sewer user fee collection services agreement with the Town. The County will have full authority to enforce its sewer-related ordinances, as they now and may exist, within those areas of the Town that are also within the County's DMA.

- 15.3.2. Town. The Town will provide sewage conveyance and treatment service to all property within its DMA and will set and collect sewer connection and sewer fees for customers served by the Town. The Town will have full authority to enforce its sewer-related ordinances, as they now and may exist, within those areas of unincorporated County that are also within the Town's DMA.
- 15.3.3. Service in Boundary Areas. The Town and the County will cooperatively plan for provision of sewer service in areas near their common DMA boundary. The Town and the County may agree to seek changes to DMA boundaries or, in the alternative, by intergovernmental agreement agree to provide inter-DMA sewer service when service efficiency, based on engineering criteria, justifies such action.
- 15.3.4. Saguaro Bloom. The area referred to in this IGA as "Saguaro Bloom" (being the current and future development of the land area depicted in the block subdivision plat titled "Saguaro Springs Blocks 1 thru 10 & A thru D and Lots 1 thru 9 & A and B," recorded in the Pima County Recorder's office at Book 58 of Maps and Plats Page 23) is included in the County's DMA until such time as the Town adds sewer lines enabling it to provide service to Saguaro Bloom. The Parties agree to the inclusion of a provision in the Town's PAG 208 Plan amendment that automatically transfers the Saguaro Bloom into the Town's DMA once the Town is capable of providing sewer service to Saguaro Bloom.
- 15.3.5. DMA Expansion/Flow Diversion. Other than as specifically set forth in this IGA, neither Party will seek to expand its DMA into the other's DMA, or divert existing or future wastewater flows from the other's DMA.
- 15.4. Effluent from Marana Utilities Department Discharges to IRWRF. County will support the Town's efforts to get beneficial use, consistent with the existing IGAs between the City of Tucson and Oro Valley and between City of Tucson and Metropolitan Domestic Water Improvement District (the "Effluent IGAs"), of as much effluent as possible generated from Marana Utilities Department potable water deliveries ultimately discharged to the IRWRF provided, however, that all such water is subject to deductions for Southern Arizona Water Rights Settlement Act (SAWRSA) purposes, the Conservation Effluent Pool, and for the County's ten percent share, consistent with the Effluent IGAs.
- 15.5. APP Amendment. The Town will accept and act in accordance with the County's approved Aquifer Protection Permit (APP) amendment pending with ADEQ, or reach a suitable alternative arrangement with ADEQ to expand the MWRf so as with little or no delay to keep up with the market demand for new connections to the MWRf. The County hereby assigns to the Town all the County's rights in and to the plans prepared for the County by Stantec Consulting Services, Inc., pursuant to County Contract no. 137487, subject to Stantec's approval of such assignment. The County gives no warranties of any kind with respect to these plans.
- 15.6. Effluent from Marana Utility Department discharges to MWRf. The County acknowledges that the Town asserts that it is not bound by the terms of the City/County IGA and the Supplemental IGA regarding SAWRSA contributions from MWRf effluent. The Town will indemnify, defend and hold harmless County from all legal actions by third parties (including the City) seeking to enforce provisions of the City/County IGA and the Supplemental IGA potentially requiring SAWRSA contributions from the MWRf effluent.

16. Miscellaneous Terms

- 16.1. Compliance with Laws. The Parties will comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this IGA. The laws and regulations of the State of Arizona will govern the rights of the Parties, the performance of this IGA and any disputes hereunder.
- 16.2. Non-Discrimination. The Parties will not discriminate against any person in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out their duties pursuant to this IGA. The Parties will comply with the provisions of Executive Order 75-5, as amended by Executive Order 2009-09, which is incorporated into this IGA by reference, as if set forth in full herein.
- 16.3. ADA. The Parties will comply with 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.
- 16.4. Severability. If any provision of this IGA, or any application thereof to the Parties or any person or circumstances, is held invalid, such invalidity will not affect other provisions or applications of this IGA which can be given effect, without the invalid provision or application and to this end the provisions of this IGA are declared to be severable.
- 16.5. Mutual Indemnity. The County agrees to indemnify and hold the Town and its agents, officials and employees, harmless from and against any expenses, claims, liability and damages that are suffered or incurred by the Town as a result of any negligent or intentionally wrongful acts of the County or a County employee, agent, or contractor, with respect to, and during, the County's operation of the MWRF and the RVWRF. The Town agrees to indemnify and hold the County and its agents, officials and employees, harmless from and against any expenses, claims, liability and damages that are suffered or incurred by the County as a result of negligent or intentionally wrongful acts of the Town or a Town employee, agent, or contractor, with respect to, and during, the Town's operation of the MWRF and the RVWRF.
- 16.6. Conflict of Interest. This contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.
- 16.7. Worker's Compensation. Each Party will comply with the notice of A.R.S. § 23-1022 (E). For purposes of A.R.S. § 23-1022, irrespective of the operations protocol in place, each Party is solely responsible for the payment of Worker's Compensation benefits for its employees.
- 16.8. No Joint Venture. It is not intended by this IGA to, and nothing contained in this IGA will be construed to, create any partnership, joint venture or employment relationship between the Parties or create any employer-employee relationship between the County and any Town employees, or between the Town and any County employees. Other than as specifically set forth in paragraph 9 above, neither party is liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other Party's obligation to withhold Social Security and income taxes for itself or any of its employees.
- 16.9. No Third Party Beneficiaries. Nothing in this IGA is intended to create duties or obligations to or rights in third parties not Parties to this IGA or affect the legal liability of either Party to this IGA by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

16.10. Notice. Any notice required or permitted to be given under this IGA must be in writing and served by delivery or by certified mail upon the other Party as follows (or at such other address as may be identified by a Party in writing to the other Party) :

County:

Town:

Director, RWRD
201 North Stone, 8th Floor
Tucson Arizona 85701

Director, Marana Utilities Department
5100 West Ina Road
Marana, Arizona

With copies to:

With copies to:

County Administrator
130 West Congress Street, 10th Floor
Tucson, Arizona 85701

Marana Town Manager
11555 West Civic Center Drive
Marana, Arizona 85653

and

and

Clerk of the Board
130 West Congress, 5th Floor
Tucson, Arizona 85701

Marana Town Clerk
11555 West Civic Center Drive
Marana, Arizona 85653

16.11. Entire Agreement. This IGA constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This IGA may not be modified, amended, altered or extended except through a written amendment signed by the Parties.

In WITNESS WHEREOF, County has caused this IGA to be executed by the Chairman of its Board of Supervisors, upon resolution of the Board and attested to by the Clerk of the Board, and the Town has caused this IGA to be executed by the Mayor upon resolution of the Town Council and attested to by the Town Clerk:

PIMA COUNTY:

TOWN OF MARANA:

Chairman, Board of Supervisors

Mayor

ATTEST:

ATTEST:

Clerk of the Board

Town Clerk

APPROVED AS TO CONTENT:

APPROVED AS TO CONTENT:

Director, RWRD

Director, Marana Utilities Department

Intergovernmental Agreement Determination

The foregoing intergovernmental agreement between Pima County and the Town of Marana has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Party to this intergovernmental agreement represented by the undersigned.

PIMA COUNTY:

TOWN OF MARANA:

Deputy County Attorney

Town Attorney

EXHIBITS

- Exhibit 1 County lease with Arizona Portland Cement Company for the RVWRF
- Exhibit 2 Legal Descriptions of MWRF and its associated lands and property rights
- Exhibit 3 Special warranty deed conveying the MWRF
- Exhibit 4 DMA Boundary Map
- Exhibit 5 MWRF debt schedule
- Exhibit 6 Reciprocal right-of-way license form

Exhibit 1
To Settlement Agreement between
Town of Marana and Pima County
RWRF Lease

LEASE

CONTRACT
NO. <u>11-64-A-136753-0705</u>
AMENDMENT NO. _____
This number must appear on all invoices, correspondence and documents pertaining to this contract

This Lease is made and entered into this 23rd day of June, 2005, by and between Arizona Portland Cement Company, an Arizona corporation, and a division of California Portland Cement Company ("Landlord") and Pima County, a body politic and corporate of the State of Arizona ("Tenant").

1. **Leased property.** Landlord hereby leases to Tenant, subject to the terms and conditions set forth below, the following described real property (the "Premises") situated in Pima County, Arizona, and shown on Attachment A:

A portion of the Southwest Quarter of the Southeast Quarter in Section 6, Township 12 South, Range 12 East, G.&S.R.B.&M, Pima County, Arizona, being more particularly described as follows:

COMMENCING at the Southwest corner of Rillito Vista Subdivision as recorded in Book 21, Page 76, of Maps of the office of the County Recorder of Pima County, Arizona; THENCE South 00° 17' 43" East, 92.00 feet; THENCE North 89° 48' 10" East, 72.50 feet to the TRUE POINT OF BEGINNING; THENCE South 00° 17' 43" East, 370.00 feet; THENCE North 89° 48' 10" East, 635.00 feet; THENCE North 00° 17' 43" West, 412.00 feet; THENCE South 89° 48' 10" West, 504.50 feet; THENCE South 00° 17' 43" East, 42.00 feet; THENCE South 89° 48' 10" West, 130.50 feet to the TRUE POINT OF BEGINNING. The above described parcel contains 5.88 acres.

2. **Term.** The term of this Lease shall be for a term of 5 years commencing on July 1, 2005 and ending on June 30, 2010, unless sooner terminated or extended as provided herein.

3. **Options to extend.** Owner grants Lessee options to extend the term of this Lease for two additional 5 year periods upon written notice delivered to Owner no later than five months in advance of a termination date, provided that Lessee is not in default of any of the terms and conditions of this Lease. Any lease extension shall be under the same terms and conditions, except that rent shall be adjusted as set forth below.

4. **Rent.**

- a. *Rent for initial term.* During the initial term Lessee shall pay to Owner, as rent for the Premises, \$1,573.22 per year payable annually, in advance.
- b. *First and annual payments for initial term.* The first annual rent payment for the period from July 1, 2005 to June 30, 2006, shall be due and payable within thirty days after the execution of this Lease. Future rental payments shall be made to Owner annually on or before July 1 of each year during the term hereof.

This is an Official Copy of the Pima County contract executed and on file with Pima County.

- c. The amount of the rent for an extension term shall be the amount of rent paid during the initial term or prior extension term, adjusted to reflect any increase or decrease in the CPI-U Consumer Price Index, as published by the Bureau of Labor Standards. In no event shall the increase or decrease exceed 5% per annum. The rental for the first extension term shall be determined by taking the April 2005 CPI-U Consumer Price Index as the denominator, and the CPI-U figure for April 2010, as the numerator and multiplying the product by monthly rent under the initial term of this lease. The resultant rent, subject to the 5% per annum limitation, shall be the monthly rental for the extended term. The rent for the second extension term shall be similarly adjusted, using the April 2010 and the April 2015 CPI-U figures, applied to the rent for the 1st extension term.
- d. *Payment address.* Rentals are payable to:

Arizona Portland Cement Company
P.O. Box 338
Rillito, Arizona 85654

5. **Option to terminate.** Lessee shall have the option to terminate this Lease effective on June 30th of any year, by delivering to Owner written notice not later than April 1 of such year.

6. **Nuisance.** It is understood that Lessee intends to maintain sewage disposal facilities on the Premises. Lessee agrees that it will maintain and operate the facilities in good and workmanlike manner and in compliance with all applicable health laws and regulations. Lessee further agrees that it will maintain and operate the facilities so as not to cause a public or private nuisance. In the event that Lessee operates or maintains the facilities so as to cause a public or private nuisance, Owner may deliver to Lessee a written demand that such nuisance be abated. In the event the nuisance is not abated within thirty days from the delivery of the demand, Owner may terminate this Lease, retaining all rentals that shall have been received by Owner. Such termination shall be effective immediately upon receipt by Lessee of Owner's written election to terminate.

7. **Access and noninterference by Owner.** Owner shall have access to the Premises during regular office hours of the Pima County Wastewater Management Department upon making reasonable prior written request. Owner shall not unreasonably interfere with the operations of Lessee.

8. **Condition upon termination; Cleanup.** At the expiration or other termination of this Lease, for any cause whatsoever, Lessee agrees to leave the Premises in a good, clean and safe condition, as may be required by applicable health and safety laws and regulations. Lessee assumes all responsibility for any reclamation necessary to meet this obligation. However, parties agree that, Lessee shall be responsible for only the cleanup limited to and arising out of or from Lessee's use of the Premises.

9. **Hold harmless.** Lessee shall indemnify, defend at its own cost and hold Owner harmless 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 any intentionally wrongful or negligent act or omission of Lessee in its operations upon or maintenance of the Premises. This paragraph 9 shall specifically include, but shall not be limited to, any environmental claims made against Owner as a result of, on account of or in any way arising from the discharge by Lessee of any material upon the Premises, except for material discharged to, or deposited upon, the Premises by Owner.

10. **Consent for assignment or sublease.** This Lease shall not be assigned nor shall the Premises be sublet without the prior written consent of Owner.

11. **Successors and assigns.** This Lease shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

12. **Notice.** Whenever in this Lease it shall be required that notice or demand be given or served by either party, the notice or demand shall be in writing and shall be delivered personally or forwarded by registered or certified mail, postage prepaid, addressed as follows:

To Owner: Arizona Portland Cement Company
P.O. Box 338
Rillito, Arizona 85654
Attention: Plant Manager

With a copy to:

California Portland Cement Company
2025 E. Financial Way
Glendora, CA 91741
Attention: Property Manager

To Lessee: Pima County Administrator's Office
130 W. Congress, 10th Floor
Tucson, Arizona 85701

With copy to:
Pima County Real Property Services
Property Management Division
201 North Stone Avenue, 6th Floor
Tucson, Arizona 85701

or elsewhere, as the parties may from time to time designate in writing. Any notice given by certified or registered mail shall be deemed to have been given three business days after having been deposited in the United States mail.

13. **Headings.** The descriptive headings used in this Lease are for convenience only and shall not be used in construing this Lease.

14. **Entire Agreement.** This Lease is intended by the parties as the final expression of the parties with respect to the subject matter hereof and supercedes any prior written or oral agreements.

15. **Severability.** The unenforceability, invalidity or illegality of any provision of this Lease shall not render any other provision unenforceable, invalid or illegal.

16. **Conflicts of Interest.** This Lease Agreement is subject to provisions of ARS 38-511 regarding the cancellation of contracts involving conflict of interest.

In witness whereof, the parties have executed this Lease the day and year first above written.

ARIZONA PORTLAND CEMENT COMPANY

By: David M. Bittel

As: Plant MANAGER

State of Arizona)
) ss
County of Pima)

This instrument was acknowledged before me this 24 day of June, 2005, by _____.

C. Jeanne Gutierrez
Notary Public

My Commission Expires:
9-20-05



Recommended to the Board of Supervisors for Approval:

Approved and accepted by Pima County.

N/A

Chair, Pima County Board of Supervisors

Attest:

L. H. Wisniewski

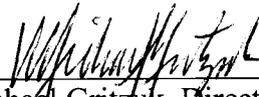
PROCUREMENT DIRECTOR
AUG 03 2005

This is an Official Copy of the Pima County contract executed and on file with Pima County.

N/A

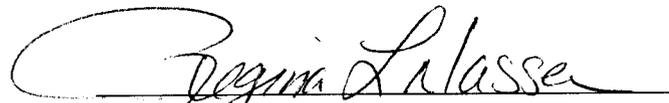
Clerk of the Board of Supervisors

Reviewed by:



Michael Gritzuk, Director
Wastewater Management

Approved as to form:



Deputy County Attorney

LeaseArizonaPortlandCement.lw

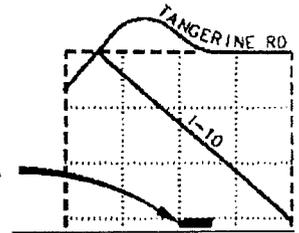
This is an Official Copy of the Pima County contract executed and on file with Pima County.

SECTION 6

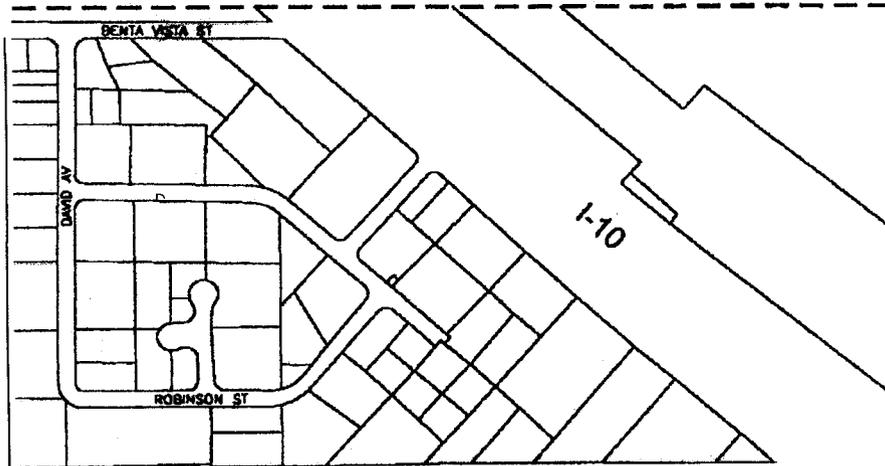
TOWNSHIP 12 SOUTH

RANGE 12 EAST

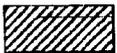
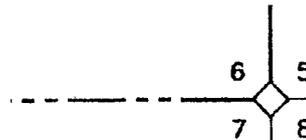
SUBJECT AREA



SECTION 6
G&SRM
PIMA COUNTY, ARIZONA



216-12-009H



LEASED PARCEL

PIMA COUNTY DEPARTMENT OF TRANSPORTATION
TECHNICAL SERVICES DIVISION

05001

This is an Official Copy of the Pima County contract executed and on file with Pima County.

TENANT: Pima County, a body politic	ORIG. LEASE TERM: 6/23/05 to 6/30/2010
PROJECT: Rillito Vista Wastewater Treatment Plant Site – Liquid Waste	TERMINATION DATE:
LANDLORD: California Portland Cement Company aka Arizona Portland Cement Company	PRIOR AMENDMENTS: None
	TERMINATION DATE THIS AMENDMENT: 6/30/2015
	ABOUT THIS AMENDMENT:
Rillito Vista West and Pond Site	

LEASE AMENDMENT NO. 1

WHEREAS, COUNTY, as Tenant, and Landlord have entered into lease for vacant land dated June 23, 2005, and Pima County Contract No. 136753-0705.

WHEREAS, COUNTY has given notice to Landlord of its exercise of the first extension period of 5 years,

NOW, THEREFORE, it is agreed as follows:

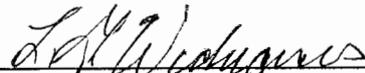
Paragraph 4 (c) – Rent for First Option Term shall be: \$1,608.00 per year.

The effective date of this amend shall be June 30, 2010.

All other provisions of the Lease, not specifically changed by this amendment shall remain in effect and be binding upon the parties.

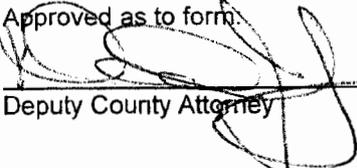
IN WITNESS THEREOF, the parties have affixed their signature to this amendment on the dates written below.

PIMA COUNTY


 Procurement Director
 Date: 7/21/10

Department of Wastewater Management


 Approved as to form: 7/9/10


 Deputy County Attorney

LEASOR: CalPortland Company,
 By: Arizona Portland Cement Company


 Signature
DAVID N. BITTEL PLANT MANAGER
 Printed Name and Title

Date: 6/29/10

CONTRACT	
NO. <u>11-64-A-136753-0705</u>	
AMENDMENT NO.	<u>01</u>
This number must appear on all invoices, correspondence and documents pertaining to this contract.	



Pima County
Survey

EXHIBIT 2 Legal Descriptions

13 April 2012

PARCEL 1

All that portion of the Southeast Quarter of Section 14, Township 11 South, Range 10 East, Gila & Salt River Meridian, Pima County, Arizona, and being a portion of that parcel as described in Docket 4932 at Page 462, more particularly described as follows:

COMENCING at the southeast corner of said Section 14, a 1/2" rebar untagged, to which the east one quarter corner, a found 1/2" rebar with Pima County ties, bears North 00°19'41" West a distance of 2632.29 feet, being the Basis of Bearing as established from the Arizona Coordinate System, 1983 (HARN92), Central Zone 0202;

THENCE along the east line of said Section 14 North 00°19'41" West a distance of 635.13 feet;

THENCE South 89°40'19" West a distance of 39.63 feet to the **POINT OF BEGINNING**;

THENCE South 46°36'52" West a distance of 23.37 feet;

THENCE South 49°46'02" West a distance of 8.86 feet;

THENCE North 43°19'03" West a distance of 6.72 feet;

THENCE South 89°32'14" West a distance of 253.34 feet;

THENCE North 04°55'56" West a distance of 18.66 feet;

THENCE South 89°46'01" West a distance of 349.87 feet;

THENCE North 26°21'18" West a distance of 106.36 feet;

THENCE North 26°50'27" West a distance of 12.45 feet;

THENCE North 25°55'14" West a distance of 19.32 feet;

THENCE North 66°19'20" West a distance of 60.77 feet;

THENCE North 48°04'52" West a distance of 8.79 feet;

THENCE North 28°05'23" West a distance of 9.53 feet;

THENCE North 18°30'41" East a distance of 8.78 feet;

THENCE North 28°37'42" East a distance of 17.93 feet;

THENCE North 20°12'48" East a distance of 7.85 feet;

THENCE North 02°38'17" East a distance of 17.62 feet;

THENCE North 26°16'09" West a distance of 255.35 feet;

THENCE North 16°41'49" West a distance of 17.87 feet;

THENCE North 07°23'44" West a distance of 9.27 feet;

THENCE North 52°16'35" East a distance of 75.49 feet to a point on a line 164.64 feet south of and parallel with the north line of the southeast quarter of the southeast quarter of said Section 14 and being the south line of that parcel as described in Docket 12774 at Page 6064 of record in the office of the Pima County Recorder;

THENCE along said parallel line North 89°38'02" East a distance of 801.27 feet;

THENCE South 00°26'24" East a distance of 455.13 feet;

THENCE South 01°00'50" East a distance of 61.22 feet to the **POINT OF BEGINNING**.



Expires 31 March 2015

**DEPICTION OF PARCEL 1
(Treatment Plant)**

**E $\frac{1}{4}$ COR
SEC. 14**

208-12-002C
DKT.12774 PG.6064

**PARCEL 1
TREATMENT PLANT**

9.07 ACS +/-

208-12-010C
DKT.4932 PG.462

**S $\frac{1}{4}$ COR
SEC. 14**

**SE COR
SEC. 14**

Exhibit 2 - Page 3 of 12



PIMA COUNTY SURVEY

A PORTION OF PARCELS 1 AND 2 DOCKET 4932 PAGE 462
LOCATED IN SECTION 14, TOWNSHIP 11 SOUTH, RANGE 10 EAST,
GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

Scale: 1" = 200'

Date: 16 April 2012

Drawn By: DRT

Sheet 1 of 1



Pima County
Survey

28 February 2013

PARCEL 2

All that portion of those parcels described in Docket 4932 at Page 462, Docket 12774 at Page 6064, Docket 12782 at Page 1395, Docket 12850 at Page 1288, Docket 13286 at Page 549 and Docket 13558 at Page 3337 of record in the office of the Pima County Recorder and being a portion of the Southwest Quarter of Section 13, the Southeast Quarter of Section 14 and the Northeast Quarter of the Northeast Quarter of Section 23, Township 11 South, Range 10 East, Gila & Salt River Meridian, Pima County, Arizona, more particularly described as follows:

BEGINNING at the southeast corner of said Section 14, a 1/2" rebar untagged, to which the east one quarter corner, a found 1/2" rebar with Pima County ties, bears North 00°19'41" West a distance of 2632.29 feet, being the Basis of Bearing as established from the Arizona Coordinate System, 1983 (HARN92), Central Zone 0202;

THENCE along the east line of said Section 23, being the east line of that parcel described in said Docket 12782 at Page 1395, South 00°19'47" East a distance of 381.44 feet;

THENCE South 89°32'14" West a distance of 319.09 feet;

THENCE North 00°27'46" West a distance of 18.60 feet;

THENCE South 89°46'01" West a distance of 168.48 feet;

THENCE North 30°07'46" West a distance of 79.74 feet;

THENCE North 07°07'29" West a distance of 127.58 feet;

THENCE North 14°02'10" West a distance of 293.63 feet;

THENCE North 10°18'18" West a distance of 265.40 feet;

THENCE North 03°38'14" West a distance of 258.19 feet;

THENCE North 89°46'01" East a distance of 349.87 feet;

THENCE South 04°55'56" East a distance of 18.66 feet;

THENCE North 89°32'14" East a distance of 253.34 feet;

THENCE South 43°19'03" East a distance of 6.72 feet;

THENCE North 49°46'02" East a distance of 8.86 feet;

THENCE North 46°36'52" East a distance of 23.37 feet;

THENCE North 01°00'50" West a distance of 61.22 feet;

THENCE North 00°26'24" West a distance of 455.13 feet to a point on a line 164.64 feet south of and parallel with the north line of the southeast quarter of the southeast quarter of said Section 14 and being the south line of Parcel Exhibit "A" as described in Docket 12774 at Page 6064;

THENCE along said parallel line South 89°38'02" West a distance of 1281.50 feet to the southwest corner of that parcel described in Docket 12850 at Page 1288 being a point on the west line of the southeast quarter of the southeast quarter of said Section 14;

THENCE along the west line of said southeast quarter and said parcel North 00°19'41" West a distance of 164.64 feet to the northwest corner of said parcel and said southeast quarter of the southeast quarter;

THENCE along the north line of said southeast quarter and the north line of said parcel North 89°38'01" East a distance of 130.00 feet to the northeast corner of said parcel and southwest corner of Parcel Exhibit "C" described in Docket 12774 at Page 6064;

THENCE along the west line of said parcel North 00°19'41" West a distance of 835.36 feet;

THENCE North 89°38'02" East a distance of 1192.75 feet to a point on the east line of said Section 14;

THENCE along said east line South 00°19'41" East a distance of 5.44 feet to the north west corner of that parcel described in Docket 13558 at Page 3337;

THENCE along the north line of said parcel South 89°52'43" East a distance of 1000.03 feet to the northeast corner of said parcel;

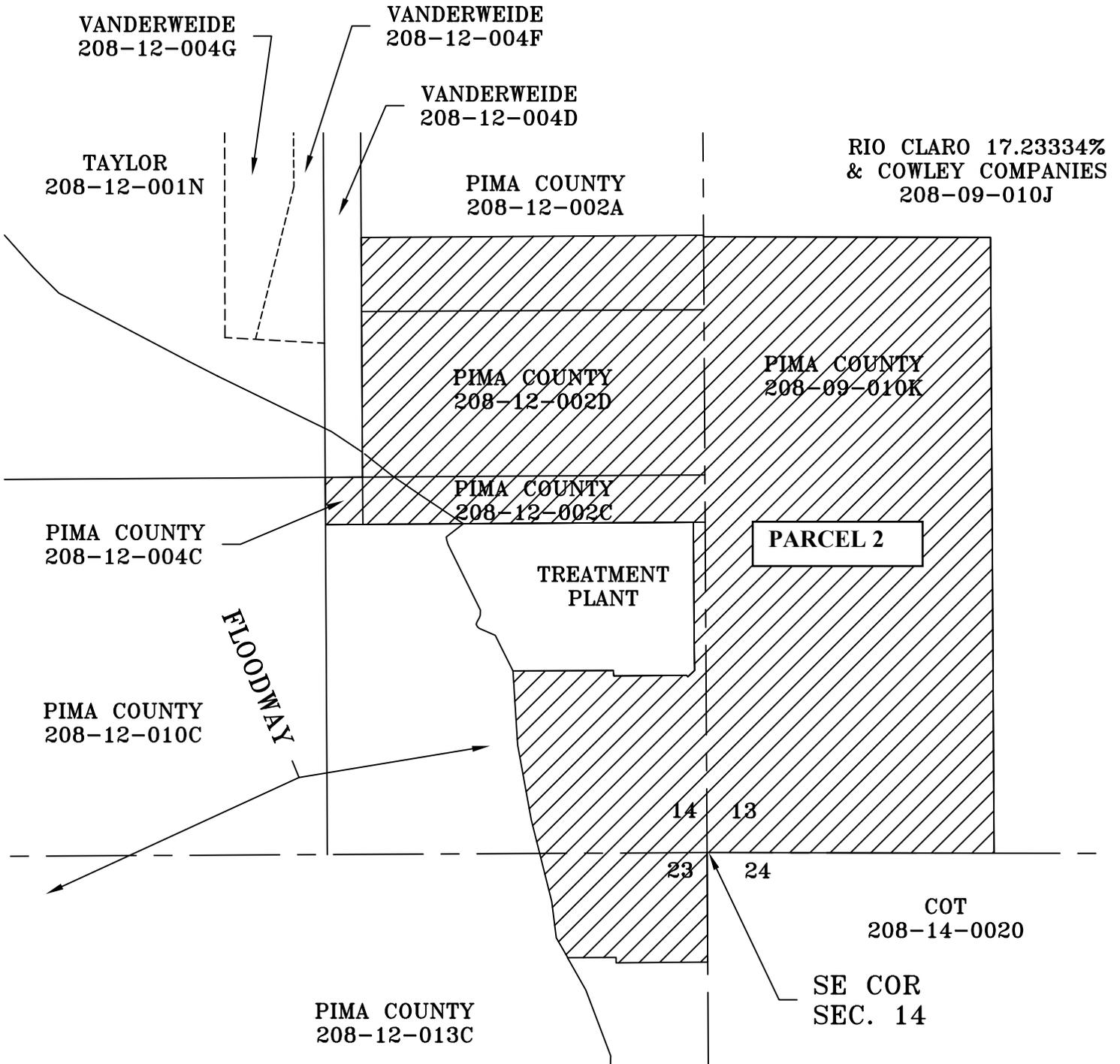
THENCE along the east line of said parcel South 00°19'41" East a distance of 2146.07 feet to the southeast corner of said parcel on the south line of said Section 13;

THENCE along said south line of Section 13 and south line of said parcel North 89°52'43" West a distance of 1000.03 feet to the **POINT OF BEGINNING**.



Expires 31 March 2015

DEPICTION OF PARCEL 2



SETBACK PARCEL AREA (PARCEL 2)
91.52 ACS. +/-

Exhibit 2 - Page 6 of 12

N



PIMA COUNTY SURVEY

A PORTION OF SECTIONS 13, 14, & 23
TOWNSHIP 11 SOUTH, RANGE 10 EAST,
GILA AND SALT RIVER MERIDIAN,
PIMA COUNTY, ARIZONA



Pima County
Survey

28 February 2013

PARCEL 3

All that portion of those parcels described in Docket 4932 at Page 462 and Docket 12782 at Page 1395, of record in the office of the Pima County Recorder and being a portion of the Southeast Quarter of Section 14 and the Northeast Quarter of the Northeast Quarter of Section 23, Township 11 South, Range 10 East, Gila & Salt River Meridian, Pima County, Arizona, more particularly described as follows:

BEGINNING at the southeast corner of said Section 14, a 1/2" rebar untagged, to which the east one quarter corner, a found 1/2" rebar with Pima County ties, bears North 00°19'41" West a distance of 2632.29 feet, being the Basis of Bearing as established from the Arizona Coordinate System, 1983 (HARN92), Central Zone 0202;

THENCE along the line common to Section 14 and Section 23, being the north line of that parcel described in said Docket 12782 at Page 1395, South 89°41'57" West a distance of 583.23 feet to the **POINT OF BEGINNING**;

THENCE South 14°02'10" East a distance of 172.62 feet;

THENCE South 07°07'29" East a distance of 127.58 feet;

THENCE South 30°07'46" East a distance of 79.74 feet;

THENCE South 89°46'01" West a distance of 990.83 feet;

THENCE North 00°00'13" West a distance of 354.05 feet;

THENCE North 26°19'19" West a distance of 1427.46 feet;

THENCE North 45°29'13" East a distance of 56.44 feet to a point on the north line of the south half of the southeast quarter of said Section 14;

THENCE along said north line North 89°38'01" East a distance of 738.81 feet to the northwest corner of the southeast quarter of the southeast quarter of said Section 14 being the northwest corner of that parcel described in Docket 12850 at Page 1288 of record in the office of the Pima County Recorder;

THENCE along the west line of said southeast quarter of the southeast quarter and west line of said parcel South 00°19'41" East a distance of 164.64 feet to the southwest corner of said parcel;

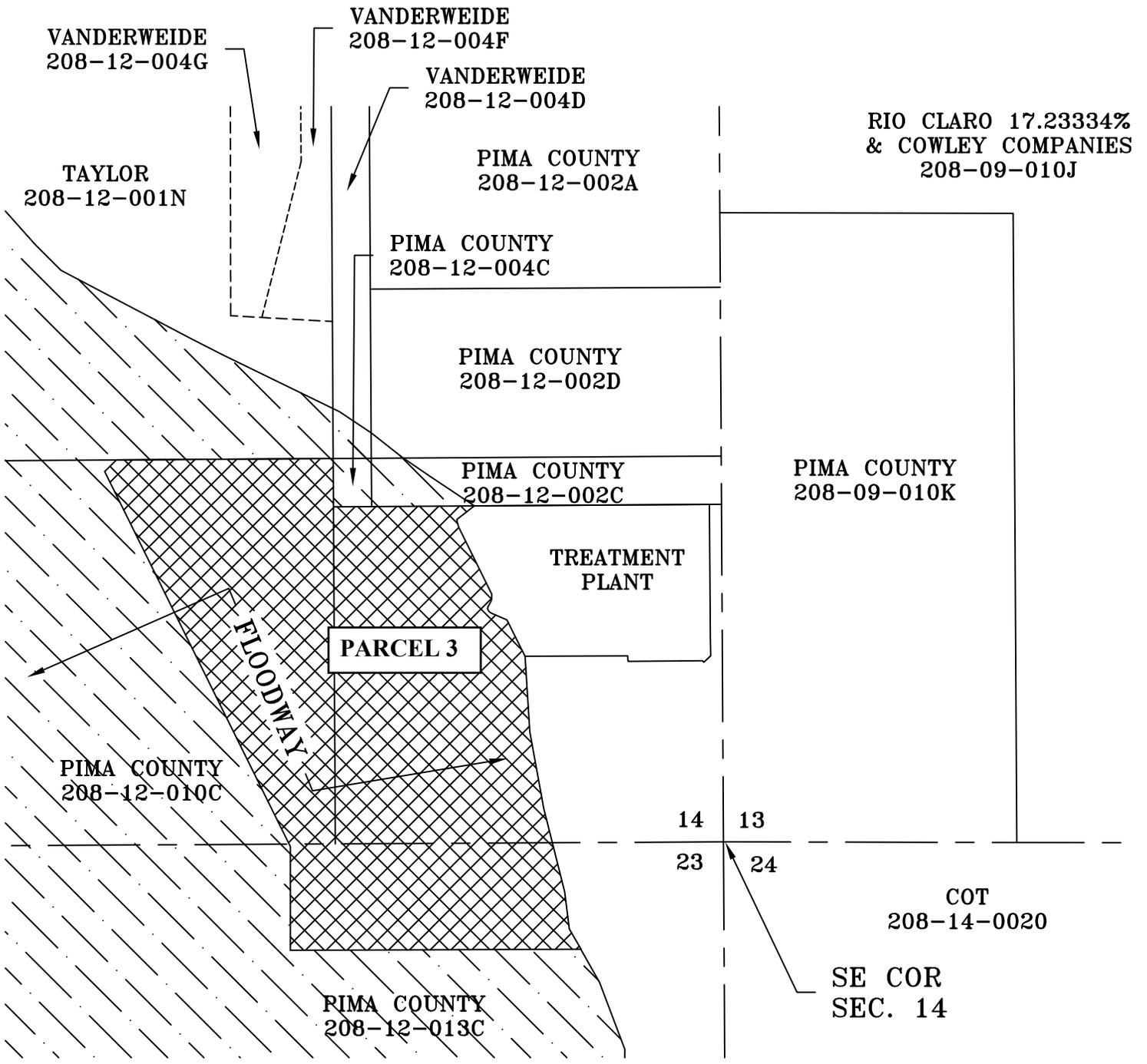
THENCE along the south line of said parcel North 89°38'01" East a distance of 130.00 feet to the southeast corner of said parcel and southwest corner of Parcel Exhibit "A" described in Docket 12774 at Page 6064;

THENCE along the south line of said parcel North 89°38'01" East a distance of 350.23 feet;
THENCE South 52°16'35" West a distance of 75.49 feet;
THENCE South 07°23'44" East a distance of 9.27 feet;
THENCE South 16°41'49" East a distance of 17.87 feet;
THENCE South 26°16'09" East a distance of 255.35 feet;
THENCE South 02°38'17" West a distance of 17.62 feet;
THENCE South 20°23'41" West a distance of 7.84 feet;
THENCE South 28°37'42" West a distance of 17.93 feet;
THENCE South 18°30'41" West a distance of 8.78 feet;
THENCE South 28°05'23" East a distance of 9.53 feet;
THENCE South 48°04'52" East a distance of 8.79 feet;
THENCE South 66°19'20" East a distance of 60.77 feet;
THENCE South 25°55'14" East a distance of 19.32 feet;
THENCE South 26°50'27" East a distance of 12.45 feet;
THENCE South 26°21'18" East a distance of 106.36 feet;
THENCE South 03°38'14" East a distance of 258.19 feet;
THENCE South 10°18'18" East a distance of 265.40 feet;
THENCE South 14°02'10" East a distance of 121.01 feet to the **POINT OF BEGINNING**.



Expires 31 March 2015

DEPICTION OF PARCEL 3



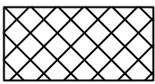
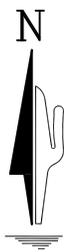
 FLOODWAY SETBACK EASEMENT (PARCEL 3)
38.29 ACS. +/-

Exhibit 2 - Page 9 of 12



PIMA COUNTY SURVEY

A PORTION OF SECTIONS 13, 14, & 23
TOWNSHIP 11 SOUTH, RANGE 10 EAST,
GILA AND SALT RIVER MERIDIAN,
PIMA COUNTY, ARIZONA



Pima County
Survey

PARCEL 4

13 April 2012

The following real property EXCEPT for the portion that is a part of Parcel **2** described above:

All that portion of the Southeast Quarter of Section 14, Township 11 South, Range 10 East, Gila & Salt River Meridian, Pima County, Arizona, and being a portion of that parcel as described in Docket 4932 at Page 462, more particularly described as follows:

COMENCING at the southeast corner of said Section 14, a 1/2" rebar untagged, to which the east one quarter corner, a found 1/2" rebar with Pima County ties, bears North 00°19'41" West a distance of 2632.29 feet, being the Basis of Bearing as established from the Arizona Coordinate System, 1983 (HARN92), Central Zone 0202;

THENCE along the east line of said Section 14 North 00°19'41" West a distance of 785.85 feet;

THENCE South 89°40'19" West a distance of 788.88 feet to the **POINT OF BEGINNING**;

THENCE South 82°19'38" West a distance of 163.77 feet;

THENCE North 22°36'33" West a distance of 188.12 feet;

THENCE North 26°08'13" West a distance of 126.23 feet;

THENCE North 76°32'15" West a distance of 103.67 feet;

THENCE North 87°37'49" West a distance of 226.02 feet;

THENCE North 81°28'03" West a distance of 328.42 feet;

THENCE South 87°53'57" West a distance of 399.60 feet;

THENCE South 89°09'47" West a distance of 556.94 feet;

THENCE North 24°39'22" West a distance of 200.11 feet;

THENCE South 89°39'17" East a distance of 1027.56 feet;

THENCE North 89°47'58" East a distance of 717.55 feet;

THENCE South 46°02'59" East a distance of 154.89 feet;

THENCE South 11°47'27" East a distance of 34.71 feet;

THENCE South 43°11'11" West a distance of 87.53 feet;

THENCE South 16°27'01" East a distance of 227.54 feet;

THENCE South 27°29'52" East a distance of 58.18 feet;

THENCE South 86°19'14" East a distance of 78.20 feet;

THENCE South 18°30'41" West a distance of 8.78 feet;

THENCE South 28°05'23" East a distance of 9.53 feet;

THENCE South 48°04'52" East a distance of 8.79 feet to the **POINT OF BEGINNING.**



Expires 31 March 2015

DEPICTION OF PARCEL 4

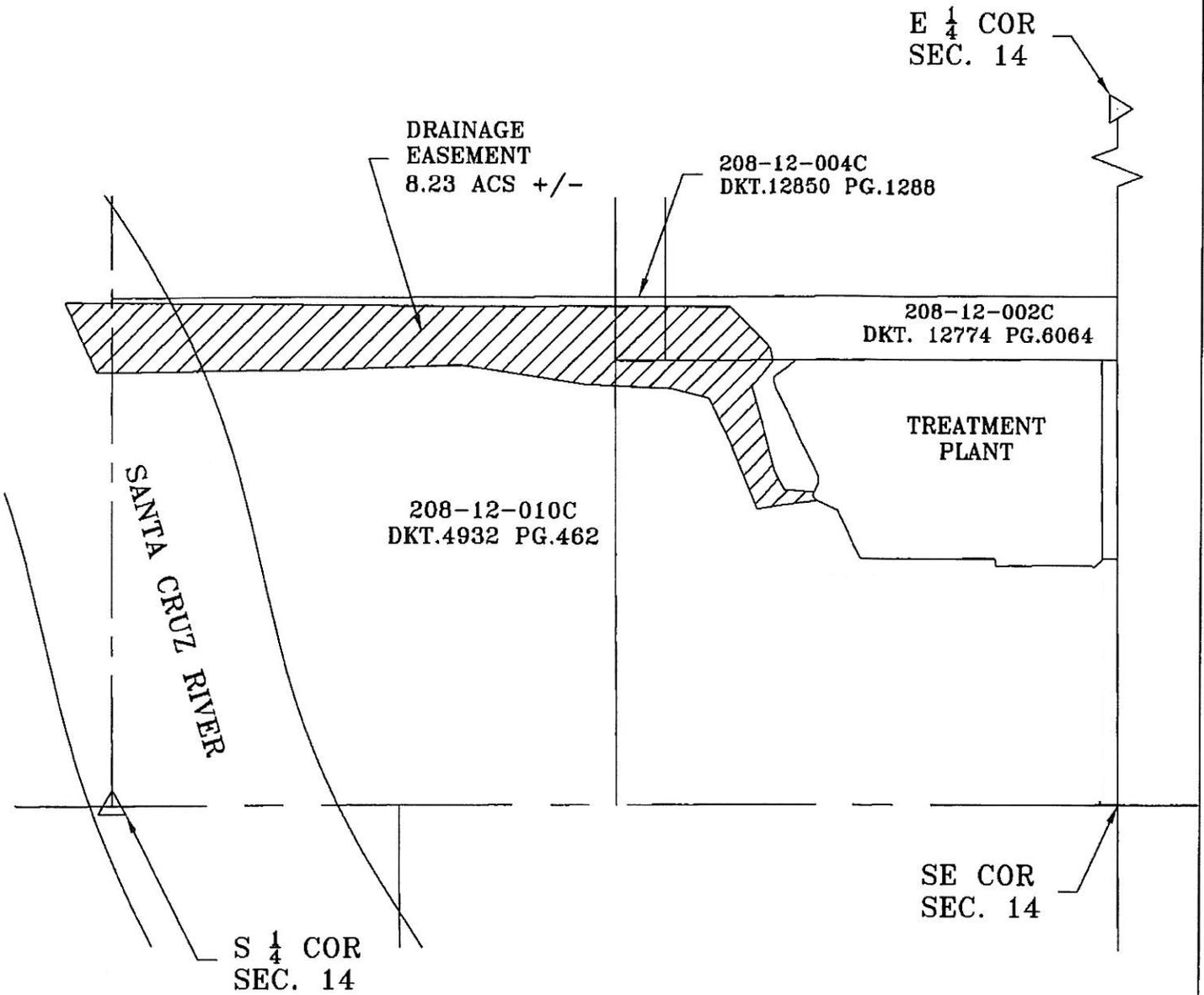


Exhibit 2 - Page 12 of 12



PIMA COUNTY SURVEY

A PORTION OF PARCELS 1 AND 2 DKT 4932 PG 462,
DKT 12774 PG 6064 & DKT 12850 PG 1288
LOCATED IN SECTION 14, TOWNSHIP 11 SOUTH, RANGE 10 EAST,
GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

Scale: 1" = 400'

Date: 16 April 2012

Drawn By: DRT

Sheet 1 of 1

Exhibit 3
To Settlement Agreement between Town of Marana and Pima County
Form of Deed

When recorded, return to:

SPECIAL WARRANTY DEED

[Exempt from Affidavit of Value Requirement pursuant to A.R.S. § 11-1134(A)(3)]

1. Conveyance. In exchange for valuable consideration, Pima County, a political subdivision of the State of Arizona (“County”), subject to the limitations and restrictions set forth in this Deed, hereby grants and conveys to the Town of Marana, an Arizona municipal corporation (“Town”), the following real property (collectively the “Property”):
 - a. The real property described on Exhibit A as Parcels 1 and 2.
 - b. The County’s interest in two regulatory setback easements for the benefit of Parcels 1 and 2, which are recorded in the official records of the Pima County Recorder in Docket 12850 at Page 1292 and in Docket 12787 at Page 74212, respectively.
 - c. A negative easement for the benefit of Parcels 1 and 2 over the real property described on Exhibit A as Parcel 3, as provided in Section 4 below (the “Setback Waiver”).
 - d. An easement for drainage purposes over a portion of Parcel 3 that is described in Exhibit A as Parcel 4, as provided in Section 5 below (the “Drainage Easement”).
2. General Exceptions. This conveyance is made subject to:
 - a. All covenants, conditions, restrictions, reservations, easements and other matters of record, or to which reference is made in the public records or of which the Town has actual knowledge.
 - b. Any and all matters that an accurate survey and physical inspection of the Property would reveal.
 - c. Any matters created by or with the written consent of Town or arising as a result of any activities of Town regarding the Property.

3. Use Restrictions on Parcel 2. Parcel 2 is being conveyed in fee, subject to the following perpetual restriction on its use, which benefits and is enforceable by the County (“Use Restriction”):
 - a. Permitted Uses. Parcel 2 may be used by Town for, and *only* for, (i) activities necessary and ancillary to the operation of a wastewater treatment and reclamation facility on Parcel 1 (including specifically the operation of effluent recharge and recovery units) except as specifically prohibited below; (ii) agricultural uses; and (iii) uses permitted by the County’s Floodplain Management Ordinance, Title 16 of the Pima County Code, for property within the floodplain or “floodway fringe area”, as it may be amended from time to time.
 - b. Prohibited Use. Notwithstanding the general description of permitted uses above, Town may not conduct or allow any activities on Parcel 2 that would, at the time the activity takes place, or that might thereafter (as a result of any later increase in the volume of the wastewater being treated on the Property), require Town to obtain a regulatory setback or waiver, easement or other restriction burdening any property to the north, south or west of the Property that is owned or controlled by Pima County or the Pima County Flood Control District.
4. Setback Waiver on Parcel 3. The Setback Waiver being granted by the County with respect to Parcel 3 is a negative easement, for regulatory-setback purposes only; it does not give Town any right to enter upon or conduct any activities on Parcel 3 (except as specifically set forth in Section 5 below) nor does it restrict County’s use of Parcel 3. It is being granted for the sole purpose of waiving the 1,000 foot regulatory setback requirement and accommodating the operation, on Parcel 1, of a wastewater treatment facility that may treat an average flow of 1,000,000 or more gallons of wastewater per day, as required by Arizona Administrative Code, Title 18, Chapter 9: Department of Environmental Quality, R18-9-B201(I)(2)(b). Operations on Parcel 1 may include package biological nutrient removal units, a biolac treatment unit, overflow ponds, a chlorine contact basin, a filtration unit, a disinfection unit, and an outfall. County acknowledges that this operation has the potential to produce noise and odor affecting Parcel 3, and waives any rights it may have, as the owner of Parcel 3, as a result of such noise and odor, and any right to enforce the 1000 foot setback requirement. This Setback Waiver is perpetual and runs with the land; it benefits and is appurtenant to Parcels 1 and 2.
5. Drainage Easement on Parcel 4; Maintenance of the Flood Prevention Berm. The Drainage Easement gives the Town the right to drain effluent from the sewage treatment facility located on Parcel 1 over and across Parcel 4. The discharge must be done in compliance with all applicable State and Federal laws, regulations and permitting requirements and the Town must maintain the area in a good and safe condition. The Town is not permitted to construct any improvements on Parcel 4. Town may, however, enter upon Parcel 3 and Parcel 4 to the extent necessary to maintain the existing flood prevention berm that runs along the edge of Parcel 1. This does not give the Town the right to expand the berm into Parcel 3 or 4.
6. Enforcement of Restrictions. Town and County agree that injunctive relief is an appropriate mechanism for enforcing the Setback Waiver, Use Restriction, and the terms of the Drainage Easement. If an action is filed in court to enforce any such restrict, or recover damages for breach, the prevailing party will be entitled to attorney’s fees and costs.

7. Limited Warranty. County warrants title to the Property only against acts of County, and no other, subject to all matters described above.

IN WITNESS WHEREOF, the County has executed, and the Town has accepted, this Special Warranty Deed as of the dates set forth below.

PIMA COUNTY, a political subdivision of the State of Arizona

By: _____

Name: _____

Title: _____

DATE:

[signature block for Town, accepting conveyance and terms and conditions]

[Exhibit A to describe:

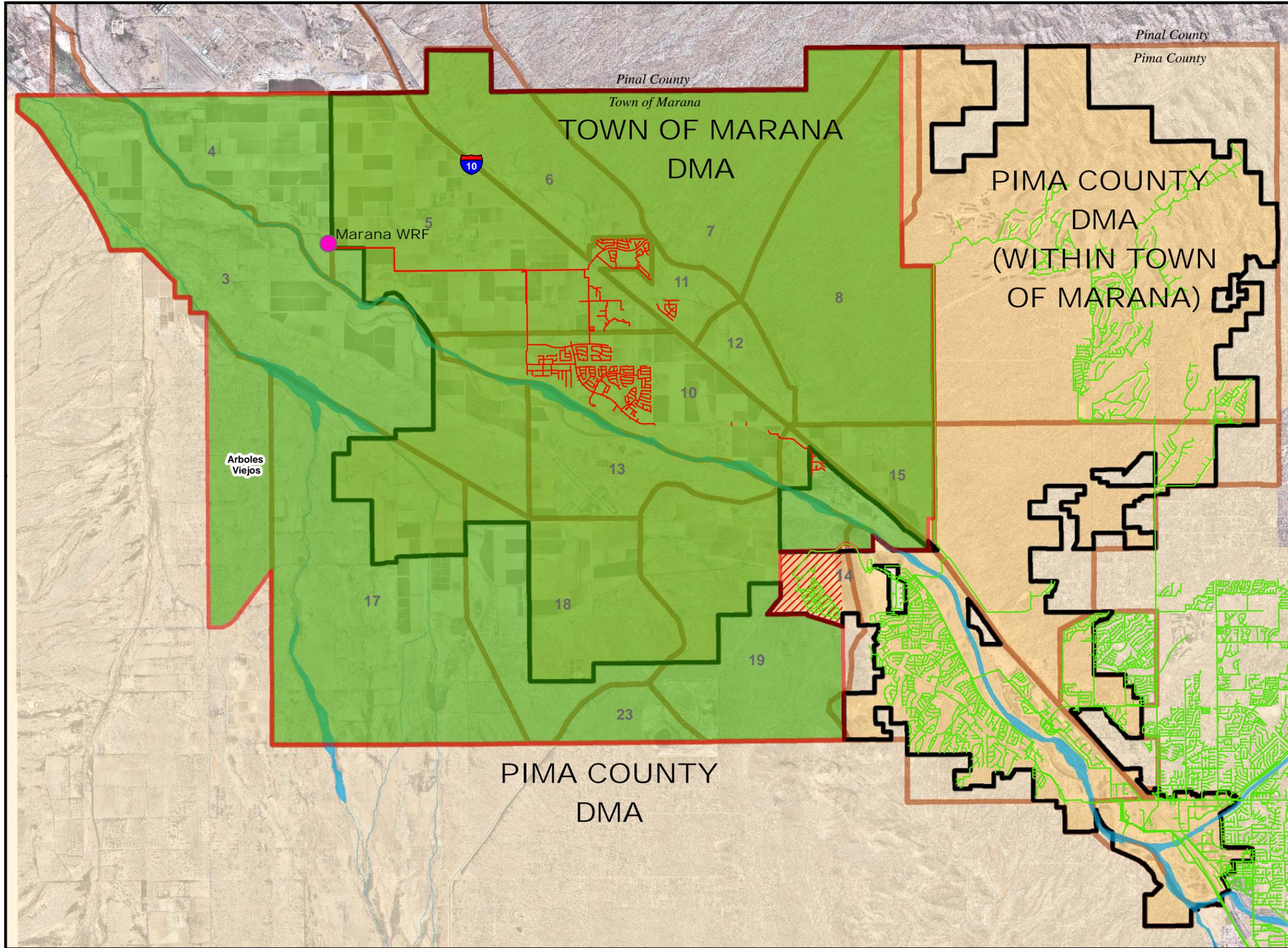
Parcel 1: Marana WRF Area

Parcel 2: Setback Area

Parcel 3: Floodway Setback Easement Area

Parcel 4: Drainage Area]

Exhibit 4 to Settlement Agreement between Town of Marana and Pima County



Town of Marana DMA



Legend

- Marana Sewer
- Pima County Sewer
- TOM_DMA_Modified_022713
- ▨ Saguaro Bloom
- Sewer Basins
- Pima County DMA in Marana
- Pima County DMA

EXHIBIT 4



PIMA COUNTY
Regional Wastewater
Reclamation Department
Tucson, Arizona



**Exhibit 5 to Marana-Pima County Settlement Agreement
Debt Service Information**

**Pima County Sewer Revenue Debt Issues
With Proceeds used for Marana Infrastructure
Total Debt Service Payments after January 1, 2012
List of First Call Dates**

<u>Debt Instrument</u>	<u>Total Debt Service¹ After January 3, 2012</u>	<u>Date of Issue</u>	<u>First Call Date²</u>
2004 WIFA Loan	1,959,607	Originally issued May 11, 2004 Amended September 1, 2005 Final Draw March 21, 2007 ³	April 1, 2017 ⁴
2007 Sewer Bond	6,790,931	January 25, 2007	July 1, 2017
2008 Sewer Bond	8,672,879	May 22, 2008	July 1, 2018
2009 COPs	214,839	June 10, 2009	Fully paid in 2012
2010 Sewer Obligations	541,120	June 17, 2010	July 1, 2020
	<u>18,179,376</u>		

1 Debt service assumes debt is paid according to original debt schedule without prepayment.

2 Source: Official Statements (except for WIFA Loan).

3 Source is final payment request and drawdown schedule for the 2004 WIFA Loan.

4 WIFA Policy # III.15 permits prepayment "following the tenth anniversary of the final loan draw."

Total Debt Outstanding - Marana's Portion

Due Date	2004 WIFA Loan		2007 Bonds		2008 Bonds		2009 COPs		2010 Obligations		Total All Debt		Total Due	Due Date
	Principal	Interest	Principal	Interest	Principal	Interest	Principal	Interest	Principal	Interest	Principal	Interest		
07/01/2012	100,185	26,368	231,867	107,594	-	135,465	210,627	4,212	-	8,937	\$ 542,679	\$ 282,576	\$ 825,255	07/01/2012
01/01/2013		24,710	-	103,246	-	135,465			-	8,936	-	272,357	272,357	01/01/2013
07/01/2013	103,501	24,710	243,552	103,246	128,561	135,465			-	8,936	475,614	272,357	747,971	07/01/2013
01/01/2014		22,997	-	98,375	-	132,894			-	8,936	-	263,202	263,202	01/01/2014
07/01/2014	106,927	22,997	255,238	98,375	177,325	132,894			4,454	8,936	543,944	263,202	807,146	07/01/2014
01/01/2015		21,227	-	93,270	-	129,347			-	8,847	-	252,691	252,691	01/01/2015
07/01/2015	110,466	21,227	268,153	93,270	105,065	129,347			4,454	8,847	488,138	252,691	740,829	07/01/2015
01/01/2016	-	19,399	-	86,566	-	127,246			-	8,785	-	241,996	241,996	01/01/2016
07/01/2016	114,123	19,399	281,684	86,566	640,144	127,246			4,454	8,785	1,040,405	241,996	1,282,401	07/01/2016
01/01/2017		17,510	-	79,524	-	114,443			-	8,707	-	220,184	220,184	01/01/2017
07/01/2017	117,900	17,510	295,830	79,524	672,063	114,443			32,344	8,707	1,118,137	220,184	1,338,321	07/01/2017
01/01/2018		15,559	-	72,128	-	101,002			-	8,011	-	196,700	196,700	01/01/2018
07/01/2018	121,803	15,559	310,590	72,128	705,754	101,002			33,735	8,011	1,171,882	196,700	1,368,582	07/01/2018
01/01/2019		13,543	-	65,723	-	86,887			-	7,181	-	173,334	173,334	01/01/2019
07/01/2019	125,834	13,543	325,966	65,723	741,219	86,887			35,394	7,181	1,228,413	173,334	1,401,747	07/01/2019
01/01/2020		11,461	-	58,796	-	72,063			-	6,299	-	148,619	148,619	01/01/2020
07/01/2020	130,000	11,461	342,572	58,796	778,014	72,063			37,153	6,299	1,287,739	148,619	1,436,358	07/01/2020
01/01/2021		9,309	-	51,516	-	52,612			-	5,386	-	118,823	118,823	01/01/2021
07/01/2021	134,303	9,309	359,793	51,516	817,026	52,612			38,991	5,386	1,350,113	118,823	1,468,936	07/01/2021
01/01/2022		7,086	-	43,646	-	36,272			-	4,411	-	91,415	91,415	01/01/2022
07/01/2022	138,748	7,086	377,629	43,646	857,811	36,272			40,939	4,411	1,415,127	91,415	1,506,542	07/01/2022
01/01/2023		4,790	-	35,149	-	18,579			-	3,387	-	61,905	61,905	01/01/2023
07/01/2023	143,340	4,790	396,080	35,149	900,812	18,579			42,976	3,387	1,483,208	61,905	1,545,113	07/01/2023
01/01/2024		2,418	-	26,237	-				-	2,313	-	30,968	30,968	01/01/2024
07/01/2024	146,091	2,418	416,375	26,237					45,136	2,313	607,602	30,968	638,570	07/01/2024
01/01/2025			-	17,910	-				-	1,185	-	19,095	19,095	01/01/2025
07/01/2025			436,671	17,910					47,385	1,185	484,056	19,095	503,151	07/01/2025
01/01/2026			-	9,176							-	9,176	9,176	01/01/2026
07/01/2026			458,813	9,176							458,813	9,176	467,989	07/01/2026
Total	\$ 1,593,221	\$ 366,386	\$ 5,000,813	\$ 1,790,118	\$ 6,523,794	\$ 2,149,085	\$ 210,627	\$ 4,212	\$ 367,415	\$ 173,705	\$ 13,695,870	\$ 4,483,506	\$ 18,179,376	Total

EXHIBIT 6
To Settlement Agreement between Town of Marana and Pima County
Form of County License Agreement

LICENSE AGREEMENT
BETWEEN
PIMA COUNTY AND THE TOWN OF MARANA
FOR SEWERS AND RELATED FACILITIES IN COUNTY RIGHTS-OF-WAY

RECITALS

- A. This License Agreement (this “Agreement”) is entered into for the purpose of authorizing the Town of Marana, a municipal corporation (the “Town”) to install and maintain public wastewater conveyance facilities in rights-of-way owned or controlled by Pima County, a political subdivision of the State of Arizona (the “County”) (the “License”).
- B. This Agreement is being entered into as a condition of an Intergovernmental Agreement (the “IGA”), <define> between the parties concerning the division of wastewater management responsibilities within and without the Town’s current boundaries.
- C. Pursuant to the IGA, the Town is responsible for providing wastewater services to customers located within the Town’s Designated Management Area (“Town DMA”) and the County is responsible for providing wastewater services to customers located outside the Town’s DMA, as those areas are described in Exhibit 4 of the IGA (attached hereto as Exhibit A).
- D. It has been determined by the Board of Supervisors that the granting of this License is authorized by law and in the best interests of Pima County and its inhabitants.

NOW THEREFORE, the Pima County Board of Supervisors and Marana Town Council agree as follows:

TERMS AND CONDITIONS OF AGREEMENT

- 1. **Grant of License.** Town is hereby licensed and empowered by County to use, on a non-exclusive basis, all public rights-of-way(including all streets, highways, roads, alleyways and thoroughfares) now established, used or dedicated to the public use that are located both within the unincorporated areas of Pima County and within the area depicted in Exhibit A as the Town DMA, under the terms and conditions set forth in this Agreement, for the purpose of installing, repairing, replacing, and maintaining Town’s wastewater conveyance facilities located or to be located within the public rights-of-way.
- 2. **Term.** The License granted by this Agreement will be effective for a term of 15 years from the date this Agreement is approved by the Board of Supervisors. This Agreement extinguishes, supersedes and replaces all preceding franchises or licenses granted by County relating to Town’s wastewater conveyance facilities in County rights-of-way (“Town Facilities”). It may be renewed for additional periods upon mutual written agreement signed by the parties.

3. **Termination.** This License may be terminated by the Pima County Board of Supervisors for any material breach by the Town of any term or provision of this Agreement or the IGA.
4. **Town Responsible for Relocation.** Except to the extent specifically provided otherwise in this Agreement, the Town must, at its cost, construct, reconstruct, adjust, relocate or repair Town Facilities as necessary to facilitate County construction projects in County rights-of-way. Costs may include, but not be limited to, all costs to develop, design, administer, procure, construct, adjust, relocate and/or repair Town Facilities, including potholing, contract document preparation and reproduction, surveying, field inspection, material testing, temporary pump-arounds, mobilization, traffic control, permits and as-built drawings.
5. **Performance of Work.** The work required to construct, reconstruct, adjust, relocate or repair Town Facilities may be performed by the County as part of the County's improvement project if the Town so requests and the County determines that doing such work itself is compatible with the County's improvement project and in the County's best interests.
 - A. Prior to the commencement of any work by the County on Town Facilities, the County will provide the Town with an estimate of how much it will cost for the County to perform the work. If the Town notifies the County, within __ days of its receipt of the cost estimate, that it approves the estimate, the County will do the work.
 - i. The Town will transfer funds in the amount of the estimate to the County within 30 days of its approval of the estimate.
 - ii. Upon final acceptance of any work done by the County, the County will determine the actual cost of the work and either return to the Town funds not spent for the work or submit a final invoice to the Town for any additional amounts due. The Town will pay any additional amounts owed for the work within 60 days of receipt of the final invoice from the County.
 - iii. If the Town objects to the amount of the final invoice, the Town must so notify the County in writing within 30 days of receipt of the invoice. Objections that are untimely or are merely oral are deemed waived. Any dispute over final payment must be submitted to the County Administrator and the Town Manager for resolution. Any dispute over any amount owed in connection with work does not affect the application or validity of this Agreement as to any other project.
 - B. If the Town rejects the County's cost estimate, or fails to respond to the estimate, it must perform the work without the County's assistance in accordance with the County's project schedule.
 - i. If the Town fails to do its work in accordance with the County project schedule, the County may, at its sole discretion, do the work and submit an invoice for the cost of the work to the Town. The Town will pay County the invoiced amount within 60 days of receipt of the invoice.

- ii. The Town will also, within 60 days of receipt of a demand from the County, pay the County for any costs incurred by the County as a result of project delays caused by the Town's failure to complete its work on schedule
 - iii. Any failure by the Town to perform the work in accordance with the County's project schedule constitutes a waiver of the Town's right to challenge or dispute the costs billed to the Town by the County. If an invoice submitted by the County is not paid by the Town within the 60 day time period, all rights granted to the Town under this Agreement will be suspended and no permits will be issued to the Town for work within County rights-of-way until the invoiced costs are paid in full.
6. **New Wastewater Line.** In connection with the location of future Town Facilities in County rights-of-way, the County will provide the Town with basic engineering data such as topographic or existing highway profile information. The Town will provide the County with input regarding future highway grades and alignments that will help minimize the need for future utility relocations or adjustments. The Town understands that such plans are subject to change upon development of final construction plans by the County. The Town will install all wastewater lines at depths greater than or equal to those required for the established future highway grades.
7. **Improvement District Projects.** If adjustment or relocation of Town Facilities is required to accommodate a County Improvement District project, the cost of that work will be borne by the Improvement District, with the following exceptions:
- A. If the District, at the Town's request, replaces Town Facilities with facilities that have an increased capacity, the Town will bear all costs attributed to the increased capacity.
 - B. The Town will bear the entire cost of replacing any Town Facilities that were budgeted for replacement by the Town.
8. **Federal/State Funded Projects.** For any project that is funded either partially or entirely by Federal or State funds, where the relocation or adjustment of any Town Facilities is a project-eligible cost, the Town will be responsible only for any amount by which the actual cost of the work exceeds the Federal or State funds available to the project for that cost.
9. **Location of Facilities in County Right-of-Way.** The Town will create and maintain accurate up-to-date maps of all Town Facilities located in County rights-of-way and make this information available to the County on request. Within 60 days of receiving notice from County of an impending County improvement project the Town will give the County the precise horizontal and vertical location of all Town Facilities within the project limits. At the request of the County, the Town will provide surface location marking for all underground Town Facilities within a project area to facilitate the planning and design of the County improvements. If the Town does not provide this information to the County in a timely manner, the County may acquire the necessary information or services needed to identify and locate the Town Facilities and will bill the Town for the cost of doing so. If the Town fails to provide the requested facility location information or the surface marking services within the time frame established by the County, that failure to perform constitutes a waiver of the Town's right to challenge or dispute the costs of the information or services billed to Town by County.

10. **No Vested Rights.** Town Facilities must be erected, installed, replaced, removed, relocated and maintained in a manner that does not interfere with the reasonable use of public rights-of-way by the public, the County, or any other utility. The location of Town Facilities in the public right-of-way does not give the Town any vested interest or right in the right-of-way and the Town will remove or relocate Town Facilities whenever the County determines that such Town Facilities restrict, obstruct or hinder the County or the public's existing or future use of the right-of-way or the County's operation or location of County facilities within the right-of-way.
11. **Permits.** Prior to beginning any activity in the County right of way, Town will obtain all required permits from the County and any other applicable jurisdiction.
12. **Regulation of County Rights of Way.** The County may at any time impose restrictions and limitations, and make regulations as to Town's use of the County's rights-of-way, as it deems best for the public interest, safety or welfare.
13. **Superior Rights.** The right of the County in and to all public rights-of-way located within the unincorporated areas of Pima County are and forever will be paramount and superior to the rights of the Town and any other licensee or franchisee.
14. **Assumption of Risk.** The Town assumes the risk of damage or destruction to Town's facilities located in County rights-of-way as a result of the activities of the County or the operation, construction, repair, relocation, replacement or maintenance of County facilities in County rights-of-way. The County is not liable for any costs, including lost revenues, incurred by the Town as a result of any such damage.
15. **Work in Right of Way.**
 - A. *Damage to other facilities.* In the construction, removal, relocation, repair, operation and maintenance of its facilities, the Town will avoid causing or permitting any damage, disturbance, unnecessary modification or alteration ("Damage") to other facilities, including pavement, located in the County right-of-way. If the Town causes or permits any such Damage it will, at its sole expense and in a manner approved by the County Engineer or other appropriate County staff, restore the facilities to their pre-Damage condition and compensate the owners of said facilities for any other losses or expenses caused by the Damage. The Town must promptly initiate and expeditiously complete the needed repairs. The Town will give priority to the repairs over all non-emergency activities of the Town.
 - B. *Damage to vegetation.* In the construction, removal, relocation, repair, operation and maintenance of its facilities, the Town will use all necessary care to avoid damaging or disturbing existing vegetation in the public right-of-way. If the Town causes or permits any such damage or disturbance it will, at its sole expense and in accordance with all County regulations then in effect, re-vegetate the right-of-way to the satisfaction of the County Engineer.
 - C. *Adjacent properties.* The Town will provide prior written notice to the owners or residents of adjoining property of any activity of Town in the right-of-way that may temporarily interfere with access to or use of said adjoining property. The Town will

maintain access to adjoining properties during all construction activities or other operations unless the requirement of access is waived in writing by the owners and residents of adjoining property. If an emergency requires the Town to commence its activity without written notice, the Town will use its best efforts to provide timely actual notice to the owners and residents of the adjoining property.

16. Design and Location of Facilities.

- A. The Town will use reasonable care at all times to avoid damage or injury to persons and property during any Town activities conducted in the County right-of-way. The Town's location and construction of Town Facilities will conform to prevailing industry standards then in effect and any County requirements in order to avoid interfering with a planned future use of the public right-of-way by the County.
- B. The Town will locate Town Facilities in a manner designed to cause the least amount of interference with the proper use of the right-of-way by the public, and minimize interference with the rights and convenience of adjacent property owners.
- C. The County may require the Town to remove, at the Town's sole expense, any Town Facilities that present a potential hazard to the public, interfere with the public's use of the public right-of-way, or are determined by County to be aesthetically undesirable.
- D. The Town will notify owners or residents of adjoining property in writing before installing permanent or temporary above or below ground facilities in the County right of way. Town will make every reasonable effort to resolve the concerns of property owners and residents regarding the construction of Town Facilities. If the County determines that the Town failed to reasonably evaluate all options available to alleviate residents' concerns, the County may require the Town to relocate its facilities at the Town's sole expense.

17. **Construction Safety.** Any opening or obstruction in the public right-of-way caused by the Town during the course of the Town's activities in the right of way will be guarded and protected at all times by safety barriers erected by the Town, which will be clearly designated by warning lights during periods of dusk and darkness. Any work performed by the Town in or adjacent to a public roadway open for travel will be properly signed and marked by the Town with warning and directional devices in accordance with all applicable state and local traffic regulations and the Arizona Department of Transportation's Traffic Control Manual for Highway Construction and Maintenance.

18. **Drainage.** During construction or excavation in the public right-of-way, the Town will provide proper drainage so that the public right-of-way will be free from standing surface water and adequately drained and no flood or erosion damage will occur to the right-of-way, any facilities in the right-of-way, or adjacent property. The Town will submit drainage engineering data and design plans to the Pima County Flood Control District for review and approval prior to the issuance of any right of way use permit by the County. The drainage plan will comply with State Arizona Pollutant Discharge Elimination System Stormwater Construction Permit requirements at A.R.S. § 49-255 et. seq.

19. **Issuance of Permit not County Approval.** County review or approval of plans or specifications or issuance of a permit for the installation, construction or location of a Town Facility will not be construed to be an authorization for or approval of any violation of any applicable industry standards. No permit or approval presuming to give such authority will be valid or otherwise relieve the Town of its obligations under this License.
20. **County Inspection.** The County has the right to inspect any work by the Town in the public right-of-way to insure proper performance of the terms of this License and conformance with any applicable federal, state and County laws, ordinances and regulations. The County may require the Town to pay a reasonable and uniform fee to cover the actual cost of inspections performed by County or its contractor under this provision.
21. **Liability; Indemnity.** The Town is solely responsible for Town Facilities for any activities it performs within the public right-of-way. The Town will indemnify, hold harmless, and defend the County, its officials, agents, servants, and employees against all claims for injuries to persons or damage to property arising out of the Town's work in the public right-of-way or the existence of Town Facilities, or in any way related to the Town's exercise of its rights under this License. Neither the issuance of a County permit for installation or location of a facility, nor County approval of the activity, installation or location, nor the failure of the County to direct the Town to take any precautions, make any changes, or refrain from doing anything, will relieve the Town of its liability to the County or others. If any such proceeding is brought, the Town will defend the County and its officials, agents, and employees and pay any resulting judgments and will, at the option of the County, be made a party to any such court proceeding.
22. **County Participation in Legal Actions.** The County may take part in any suit or action instituted by or against Town in which any judgment or decree can be rendered that (i) forecloses any lien on any Town Facility; (ii) affects the right, power or duty of the Town to do or not do anything pursuant to this License Agreement; (iii) interferes with the Town's performance or observance of any term or condition of this License or any regulation, notice or direction of the County, or (iv) involves the constitutionality, validity or enforcement of this License. The County may move for dissolution of any injunction or restraining order and take any other appropriate step, in any such suit, action or proceeding, that it deems necessary or advisable to protect its interests or the interests of the public.
23. **Compliance with License Conditions; Ordinances.** The Town's exercise of its rights under this License is subject to all County ordinances now in force or that hereafter may be adopted, including all ordinances relating to the use of public rights-of-way by utilities. Town agrees that it will not make any claim that any provision of this License, or any applicable County ordinance or regulation in force at the time of execution of this License, is unreasonable, arbitrary or void.
24. **Compliance with State and Federal Environmental Laws.** The Town agrees to conform to and abide by all State and Federal laws now in force or that hereafter may be adopted, including laws pertaining to Section 404 of the Clean Water Act, the Endangered Species Act and the AZPDES Stormwater Construction Permit Program.

25. **Non-exclusive License.** This License is not exclusive. The Board of Supervisors expressly reserves the right to grant, at any time, similar franchises, licenses and privileges over the same rights-of-way to any other persons, firms or corporations.
26. **Assignment.** The Town hereby agrees it will not assign this License or transfer ownership of any Town Facilities in the County right-of-way without the prior written approval of the Pima County Board of Supervisors. The decision to approve or deny the assignment or transfer is within the sole discretion of the Board of Supervisors and the Board may disapprove the proposed assignment or transfer if such disapproval is in the best interests of the County.

Town of Marana:

Pima County:

Mayor

Chairman of the Board

ATTEST:

ATTEST:

Town Clerk

Clerk of the Board

Date: _____

Date: _____

Approved as to form:

Approved as to form:

Assistant Town Attorney

Deputy County Attorney

EXHIBIT 6
To Settlement Agreement between Town of Marana and Pima County
Form of Town License Agreement

LICENSE AGREEMENT
BETWEEN
PIMA COUNTY AND THE TOWN OF MARANA
FOR SEWERS AND RELATED FACILITIES IN TOWN RIGHTS-OF-WAY

RECITALS

- A. This License Agreement (this “Agreement”) is entered into for the purpose of authorizing the Pima County, a political subdivision of the State of Arizona (the “County”) to install and maintain public wastewater conveyance facilities in rights-of-way owned or controlled by Town of Marana, a municipal corporation (the “Town”) (the “License”).
- B. This Agreement is being entered into as a condition of an Intergovernmental Agreement (the “IGA”), <define> between the parties concerning the division of wastewater management responsibilities within and without the Town’s current boundaries.
- C. Pursuant to the IGA, the Town is responsible for providing wastewater services to customers located within the Town’s Designated Management Area (“Town DMA”) and the County is responsible for providing wastewater services to customers located outside the Town’s DMA, as those areas are described in Exhibit 4 of the IGA (attached hereto as Exhibit A).
- D. It has been determined by the Town Council that the granting of this License is authorized by law and in the best interests of the Town of Marana and its inhabitants.

NOW THEREFORE, the Pima County Board of Supervisors and Marana Town Council agree as follows:

TERMS AND CONDITIONS OF AGREEMENT

- 1. **Grant of License.** County is hereby licensed and empowered by Town to use, on a non-exclusive basis, all public rights-of-way(including all streets, highways, roads, alleyways and thoroughfares) now established, used or dedicated to the public use that are located both within the incorporated areas of the town of Marana and outside the area depicted in Exhibit A as the Town DMA, under the terms and conditions set forth in this Agreement, for the purpose of installing, repairing, replacing, and maintaining County’s wastewater conveyance facilities located or to be located within the public rights-of-way.
- 2. **Term.** The License granted by this Agreement will be effective for a term of 15 years from the date this Agreement is approved by the Town Council. This Agreement extinguishes, supersedes and replaces all preceding franchises or licenses granted by Town relating to County’s wastewater conveyance facilities in Town rights-of-way (“County Facilities”). It may be renewed for additional periods upon mutual written agreement signed by the parties.

3. **Termination.** This License may be terminated by the Marana Town Council for any material breach by the County of any term or provision of this Agreement or the IGA.
4. **County Responsible for Relocation.** Except to the extent specifically provided otherwise in this Agreement, the County must, at its cost, construct, reconstruct, adjust, relocate or repair County Facilities as necessary to facilitate Town construction projects in Town rights-of-way. Costs may include, but not be limited to, all costs to develop, design, administer, procure, construct, adjust, relocate and/or repair County Facilities, including potholing, contract document preparation and reproduction, surveying, field inspection, material testing, temporary pump-arounds, mobilization, traffic control, permits and as-built drawings.
5. **Performance of Work.** The work required to construct, reconstruct, adjust, relocate or repair County Facilities may be performed by the Town as part of the Town's improvement project if the County so requests and the Town determines that doing such work itself is compatible with the Town's improvement project and in the Town's best interests.
 - A. Prior to the commencement of any work by the Town on County Facilities, the Town will provide the County with an estimate of how much it will cost for the Town to perform the work. If the County notifies the Town, within __ days of its receipt of the cost estimate, that it approves the estimate, the Town will do the work.
 - i. The County will transfer funds in the amount of the estimate to the Town within 30 days of its approval of the estimate.
 - ii. Upon final acceptance of any work done by the Town, the Town will determine the actual cost of the work and either return to the County funds not spent for the work or submit a final invoice to the County for any additional amounts due. The County will pay any additional amounts owed for the work within 60 days of receipt of the final invoice from the Town.
 - iii. If the County objects to the amount of the final invoice, the County must so notify the Town in writing within 30 days of receipt of the invoice. Objections that are untimely or are merely oral are deemed waived. Any dispute over final payment must be submitted to the County Administrator and the Town Manager for resolution. Any dispute over any amount owed in connection with work does not affect the application or validity of this Agreement as to any other project.
 - B. If the County rejects the Town's cost estimate, or fails to respond to the estimate, it must perform the work without the Town's assistance in accordance with the Town's project schedule.
 - i. If the County fails to do its work in accordance with the Town project schedule, the Town may, at its sole discretion, do the work and submit an invoice for the cost of the work to the County. The County will pay Town the invoiced amount within 60 days of receipt of the invoice.

- ii. The County will also, within 60 days of receipt of a demand from the Town, pay the Town for any costs incurred by the Town as a result of project delays caused by the County's failure to complete its work on schedule
 - iii. Any failure by the County to perform the work in accordance with the Town's project schedule constitutes a waiver of the County's right to challenge or dispute the costs billed to the County by the Town. If an invoice submitted by the Town is not paid by the County within the 60 day time period, all rights granted to the County under this Agreement will be suspended and no permits will be issued to the County for work within Town rights-of-way until the invoiced costs are paid in full.
6. **New Wastewater Line.** In connection with the location of future County Facilities in Town rights-of-way, the Town will provide the County with basic engineering data such as topographic or existing highway profile information. The County will provide the Town with input regarding future highway grades and alignments that will help minimize the need for future utility relocations or adjustments. The County understands that such plans are subject to change upon development of final construction plans by the Town. The County will install all wastewater lines at depths greater than or equal to those required for the established future highway grades.
7. **Improvement District Projects.** If adjustment or relocation of County Facilities is required to accommodate a County Improvement District project, the cost of that work will be borne by the Improvement District, with the following exceptions:
- A. If the District, at the County's request, replaces County Facilities with facilities that have an increased capacity, the County will bear all costs attributed to the increased capacity.
 - B. The County will bear the entire cost of replacing any County Facilities that were budgeted for replacement by the County.
8. **Federal/State Funded Projects.** For any project that is funded either partially or entirely by Federal or State funds, where the relocation or adjustment of any County Facilities is a project-eligible cost, the County will be responsible only for any amount by which the actual cost of the work exceeds the Federal or State funds available to the project for that cost.
9. **Location of Facilities in Town Right-of-Ways.** The County will create and maintain accurate up-to-date maps of all County Facilities located in Town rights-of-way and make this information available to the Town on request. Within 60 days of receiving notice from Town of an impending Town improvement project the County will give the Town the precise horizontal and vertical location of all County Facilities within the project limits. At the request of the Town, the County will provide surface location marking for all underground County Facilities within a project area to facilitate the planning and design of the Town improvements. If the County does not provide this information to the Town in a timely manner, the Town may acquire the necessary information or services needed to identify and locate the County Facilities and will bill the County for the cost of doing so. If the County fails to provide the requested facility location information or the surface marking services within the time frame established by the Town, that failure to perform

constitutes a waiver of the County's right to challenge or dispute the costs of the information or services billed to County by Town.

10. **No Vested Rights.** County Facilities must be erected, installed, replaced, removed, relocated and maintained in a manner that does not interfere with the reasonable use of public rights-of-way by the public, the Town, or any other utility. The location of County Facilities in the public right-of-way does not give the County any vested interest or right in the right-of-way and the County will remove or relocate County Facilities whenever the Town determines that such County Facilities restrict, obstruct or hinder the Town or the public's existing or future use of the right-of-way or the Town's operation or location of Town facilities within the right-of-way.
11. **Permits.** Prior to beginning any activity in the Town right of way, County will obtain all required permits from the Town and any other applicable jurisdiction.
12. **Regulation of Town Rights of Way.** The Town may at any time impose restrictions and limitations, and make regulations as to County's use of the Town's rights-of-way, as it deems best for the public interest, safety or welfare.
13. **Superior Rights.** The right of the Town in and to all public rights-of-way located within the incorporated areas of the Town of Marana are and forever will be paramount and superior to the rights of the County and any other licensee or franchisee.
14. **Assumption of Risk.** The County assumes the risk of damage or destruction to County's facilities located in Town rights-of-way as a result of the activities of the Town or the operation, construction, repair, relocation, replacement or maintenance of Town facilities in Town rights-of-way. The Town is not liable for any costs, including lost revenues, incurred by the County as a result of any such damage.
15. **Work in Right of Way.**
 - A. *Damage to other facilities.* In the construction, removal, relocation, repair, operation and maintenance of its facilities, the County will avoid causing or permitting any damage, disturbance, unnecessary modification or alteration ("Damage") to other facilities, including pavement, located in the Town right-of-way. If the County causes or permits any such Damage it will, at its sole expense and in a manner approved by the Town Engineer or other appropriate Town staff, restore the facilities to their pre-Damage condition and compensate the owners of said facilities for any other losses or expenses caused by the Damage. The County must promptly initiate and expeditiously complete the needed repairs. The County will give priority to the repairs over all non-emergency activities of the County.
 - B. *Damage to vegetation.* In the construction, removal, relocation, repair, operation and maintenance of its facilities, the County will use all necessary care to avoid damaging or disturbing existing vegetation in the public right-of-way. If the County causes or permits any such damage or disturbance it will, at its sole expense and in accordance with all Town regulations then in effect, re-vegetate the right-of-way to the satisfaction of the Town Engineer.

C. *Adjacent properties.* The County will provide prior written notice to the owners or residents of adjoining property of any activity of County in the right-of-way that may temporarily interfere with access to or use of said adjoining property. The County will maintain access to adjoining properties during all construction activities or other operations unless the requirement of access is waived in writing by the owners and residents of adjoining property. If an emergency requires the County to commence its activity without written notice, the County will use its best efforts to provide timely actual notice to the owners and residents of the adjoining property.

16. Design and Location of Facilities.

A. The County will use reasonable care at all times to avoid damage or injury to persons and property during any County activities conducted in the Town right-of-way. The County's location and construction of County Facilities will conform to prevailing industry standards then in effect and any Town requirements in order to avoid interfering with a planned future use of the public right-of-way by the Town.

B. The County will locate County Facilities in a manner designed to cause the least amount of interference with the proper use of the right-of-way by the public, and minimize interference with the rights and convenience of adjacent property owners.

C. The Town may require the County to remove, at the County's sole expense, any County Facilities that present a potential hazard to the public, interfere with the public's use of the public right-of-way, or are determined by Town to be aesthetically undesirable.

D. The County will notify owners or residents of adjoining property in writing before installing permanent or temporary above or below ground facilities in the Town right of way. County will make every reasonable effort to resolve the concerns of property owners and residents regarding the construction of County Facilities. If the Town determines that the County failed to reasonably evaluate all options available to alleviate residents' concerns, the Town may require the County to relocate its facilities at the County's sole expense.

17. **Construction Safety.** Any opening or obstruction in the public right-of-way caused by the County during the course of the County's activities in the right of way will be guarded and protected at all times by safety barriers erected by the County, which will be clearly designated by warning lights during periods of dusk and darkness. Any work performed by the County in or adjacent to a public roadway open for travel will be properly signed and marked by the County with warning and directional devices in accordance with all applicable state and local traffic regulations and the Arizona Department of Transportation's Traffic Control Manual for Highway Construction and Maintenance.

18. **Drainage.** During construction or excavation in the public right-of-way, the County will provide proper drainage so that the public right-of-way will be free from standing surface water and adequately drained and no flood or erosion damage will occur to the right-of-way, any facilities in the right-of-way, or adjacent property. The County will submit drainage engineering data and design plans to the Pima County Flood Control District for review and approval prior to the issuance of any right of way use permit by the Town. The

drainage plan will comply with State Arizona Pollutant Discharge Elimination System Stormwater Construction Permit requirements at A.R.S. § 49-255 et. seq.

19. **Issuance of Permit not Town Approval.** Town review or approval of plans or specifications or issuance of a permit for the installation, construction or location of a County Facility will not be construed to be an authorization for or approval of any violation of any applicable industry standards. No permit or approval presuming to give such authority will be valid or otherwise relieve the County of its obligations under this License.
20. **Town Inspection.** The Town has the right to inspect any work by the County in the public right-of-way to insure proper performance of the terms of this License and conformance with any applicable federal, state and Town laws, ordinances and regulations. The Town may require the County to pay a reasonable and uniform fee to cover the actual cost of inspections performed by Town or its contractor under this provision.
21. **Liability; Indemnity.** The County is solely responsible for County Facilities for any activities it performs within the public right-of-way. The County will indemnify, hold harmless, and defend the Town, its officials, agents, servants, and employees against all claims for injuries to persons or damage to property arising out of the County's work in the public right-of-way or the existence of County Facilities, or in any way related to the County's exercise of its rights under this License. Neither the issuance of a Town permit for installation or location of a facility, nor Town approval of the activity, installation or location, nor the failure of the Town to direct the County to take any precautions, make any changes, or refrain from doing anything, will relieve the County of its liability to the Town or others. If any such proceeding is brought, the County will defend the Town and its officials, agents, and employees and pay any resulting judgments and will, at the option of the Town, be made a party to any such court proceeding.
22. **Town Participation in Legal Actions.** The Town may take part in any suit or action instituted by or against County in which any judgment or decree can be rendered that (i) forecloses any lien on any County Facility; (ii) affects the right, power or duty of the County to do or not do anything pursuant to this License Agreement; (iii) interferes with the County's performance or observance of any term or condition of this License or any regulation, notice or direction of the Town, or (iv) involves the constitutionality, validity or enforcement of this License. The Town may move for dissolution of any injunction or restraining order and take any other appropriate step, in any such suit, action or proceeding, that it deems necessary or advisable to protect its interests or the interests of the public.
23. **Compliance with License Conditions; Ordinances.** The Town's exercise of its rights under this License is subject to all Town ordinances now in force or that hereafter may be adopted, including all ordinances relating to the use of public rights-of-way by utilities. County agrees that it will not make any claim that any provision of this License, or any applicable Town ordinance or regulation in force at the time of execution of this License, is unreasonable, arbitrary or void.
24. **Compliance with State and Federal Environmental Laws.** The County agrees to conform to and abide by all State and Federal laws now in force or that hereafter may be adopted, including laws pertaining to Section 404 of the Clean Water Act, the Endangered Species Act and the AZPDES Stormwater Construction Permit Program.

25. **Non-exclusive License.** This License is not exclusive. The Marana Town Council expressly reserves the right to grant, at any time, similar franchises, licenses and privileges over the same rights-of-way to any other persons, firms or corporations.
26. **Assignment.** The County hereby agrees it will not assign this License or transfer ownership of any County Facilities in the Town right-of-way without the prior written approval of the Marana Town Council. The decision to approve or deny the assignment or transfer is within the sole discretion of the Town Council and it may disapprove the proposed assignment or transfer if such disapproval is in the best interests of the Town.

Town of Marana:

Pima County:

Mayor

Chairman of the Board

ATTEST:

ATTEST:

Town Clerk

Clerk of the Board

Date: _____

Date: _____

Approved as to form:

Approved as to form:

Assistant Town Attorney

Deputy County Attorney