

## NAVAJO COUNTY AGENDA ITEM REQUEST FORM

<b>Meeting Date:</b> April 14, 2014	<b>Time Needed:</b> 5 minutes					
<b>Requesting Department:</b> Navajo County Flood Control District	<b>Presenter(s) Name:</b> Bill Bess					
<b>Motion before the Board:</b> Approve the purchase of a drainage easement across Assessor's Parcel Number 411-71-321D for \$60,000 as part of regional drainage improvements for Pinetop Country Club.						
<b>Recommendation:</b> (who, what, where, when, how, etc.) Staff recommends approval of the purchase of this easement.						
<p><b>Background:</b> (why should it be done, what will happen if not approved, etc. include resolution)</p> <p>The Pinetop Country Club has several drainage problems that cause localized flooding issues. The Easement and Land Purchase Agreement (0.5 ac) being considered for procurement is located on the Easterly Portion of APN 411-71-321D, in a natural low area where the existing drainage flow is being constricted. Navajo County Flood Control District has received many drainage complaints in the vicinity of Tall Pine Drive and Elk Road area. Once the easement has been acquired, Navajo County will construct a drainage channel that will convey the 100 year storm event.</p> <p>The new drainage channel is located at the lowest end of the drainage basin and the channel will discharge into Forest Service property.</p> <p>Mrs. Nancy Guggisburg, the property owner, has agreed to sell the drainage easement for \$60,000. This is reasonable price for following reasons:</p> <ol style="list-style-type: none"> <li>1. The price determined by comparing 2 appraisals prepared by two professional land appraisers hired by Navajo County;</li> <li>2. The importance of the lot's location to help mitigate the local drainage problems.</li> </ol> <p>Staff is recommending that this easement be purchased by Navajo County. The County's payment will be delivered to the owner in exchange for a properly executed and acknowledged easement prepared by the County Attorney's Office.</p>						
<b>Fiscal Impact:</b> (what will it cost, where funds will come from, is it budgeted, etc.) Installation of 2 signs and 1 post will cost the Navajo County Public Works Sign department \$140.						
<b>Reviewed and approved by:</b>	County Manager <input type="checkbox"/>	County Attorney <input type="checkbox"/>	Human Resources <input type="checkbox"/>	Finance <input type="checkbox"/>	IT <input type="checkbox"/>	Public Works <input type="checkbox"/>
Approved <input type="checkbox"/>	Denied <input type="checkbox"/>	<b>Board Action Taken</b> No Action <input type="checkbox"/>		Continued <input type="checkbox"/>	Continued to: _____	
Approved with changes as follows: _____						

**Clerk's Notes**

**Date:**

**Initial:**

**REMINDER:** Email this coversheet and all backup documentation to **BOS.Clerk** by **Noon the Tuesday** before the **BOS meeting**.

## EASEMENT AND LAND PURCHASE AGREEMENT

DATE: Effective date of this Agreement shall be the \_\_\_\_\_ day of April, 2015.

PLACE: Pinetop Country Club, located within Navajo County, Arizona

PARTIES: NANCY GUGGISBERG, hereinafter referred to as "Seller"; and Navajo County Flood Control District, a special taxation district of Navajo County, a Political Subdivision of the State of Arizona, hereinafter referred to as "Buyer".

PURPOSE: To set forth the rights, responsibilities, and duties of the parties in connection with the four (4) year easement, and purchase and sale of certain improved real property in the Pinetop Country Club, located within Navajo County, Arizona, legally described on Exhibit "A" attached hereto and incorporated herein by reference.

RECITALS: Seller holds title to the subject property and desires to sell and grant an easement for four (4) years and then convey title to Buyer for the purpose of improving flood control within the area.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Purchase and Sale.** Buyer agrees to sell and grant an easement for four (4) years and then convey title to Buyer of the property more particularly described on Exhibit "A" attached hereto and made a part hereof, hereinafter referred to in this Agreement as the "subject property", all in accordance with the terms and conditions herein described.

2. **Purchase Price and exchange.** The purchase price to be paid by the Buyer to Seller for the subject property is the sum of sixty thousand dollars and no cents (\$60,000.00), payable according to the terms of payment listed herein.

3. **Terms of Payment.** The purchase price and total consideration be paid by the Buyer to the Seller is as follows:

3.1 \$60,000.00 shall be tenured in a single check to the property owner simultaneously with the consummation of this agreement. The owner of the property shall sign

and grant an easement to the Buyer for a period of four (4) years, more particularly described on Exhibit "B" attached hereto and made a part hereof. The easement document shall contain subject property map of the specific easement area, more particularly described on Exhibit "C" attached hereto and made a part hereof. The Buyer shall have the easement recorded at the Navajo County Recorder's Office within a reasonable amount of time, once this agreement is ratified. At the conclusion of the four (4) year period, the Seller shall sign a quit claim deed transferring ownership from the Seller to the Buyer. The Buyer shall have the quit claim deed recorded at the Navajo County Recorder's Office within a reasonable amount of time, once this agreement is ratified. The check shall be payable to Nancy Guggisberg.

4. **Possession of Property**. Buyer shall be entitled to possession of the subject property according to the easement granted by the Seller, Exhibit B, following the signing of these documents.

5. **Payment of Taxes**. Seller shall pay all applicable taxes and assessments levied upon the subject property during the four (4) year period the easement is in place. Once the Seller signs the above mentioned quit claim deed transferring ownership from the Seller to the Buyer, Seller is no longer liable for all applicable taxes and assessments levied on the subject property.

6. **No Assignment**. This Agreement or the subject property shall not be assigned, conveyed, or transferred by Buyer to any other party without the express prior written consent of either party. Seller's consent to assignment of Buyer's interest herein shall not be deemed a consent to any further or additional assignment, and may be conditioned upon Buyer's assignee's assumption and agreement to be bound by all terms and conditions of this Agreement, provided that Seller's consent to any such assignment by Buyer shall not release Buyer from any obligations under this Agreement, notwithstanding the assumption by Buyer's assignee of all of

Buyer's obligations. This Agreement or the subject property shall not be assigned, conveyed, or transferred by Seller to any other party without the express prior written consent of Buyer.

7. **No Warranties.** Buyer agrees that the subject property shall be purchased in an "as-is" and "as-shown" condition, with no representation or warranty of any type or nature being made by Seller. Buyer acknowledges and agrees that it is purchasing the easement for a four (4) year period and thereafter purchasing the subject property solely upon the basis of its own investigation and not on the basis of any representation, express or implied, written or oral, made by Seller or its agents, partners, co-venturers, or employees. Without limiting the generality of the foregoing, Seller makes no warranty as to the sufficiency of the subject property for Buyer's purposes, the square footage or acreage contained within the subject property, the sufficiency or completeness of any plans for the subject property, the approval by any governmental entity of the plans, plats, zoning, or other development items relating to the subject property, or any improvements on the subject property, except as expressly set forth elsewhere in this Agreement.

8. **Mutual Cooperation.** Each party covenants and agrees that it will cooperate reasonably with the other party to carry out this Agreement.

9. **Entire Contract.** This Agreement shall constitute the entire contract between the parties and may not be modified except by an instrument in writing, signed by each of them.

10. **Construction.** This contract shall be construed in accordance with the laws of the State of Arizona. In the event of a dispute that the parties are unable to resolve through the use of an alternative dispute resolution process, it is agreed that the Courts of Navajo County, Arizona, shall have exclusive jurisdiction and be the appropriate venue for resolving the matter.

11. **Notices**. Any notices required to be given to Seller or Buyer under the terms of this Agreement shall be deemed given five (5) days after mailed by certified mail, postage prepaid, addressed to the appropriate party at their respective addresses:

If to Seller: Nancy Guggisberg  
43956 West Yucca Lane  
Maricopa, AZ 85138

If to Buyer: Navajo County  
Attn: Public Works Director  
100 Code Talkers Drive  
Holbrook, AZ 86025

12. **Time is of the Essence**. The parties acknowledge that the closing dates of escrow are important and agree that time shall be of the essence of the Agreement with reference to such closing date.

13. **Binding**. This Agreement shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors, and assigns of the respective parties hereto.

14. **Attorney's Fees**. If any action is brought by either party in respect of its rights under this Agreement or the closing documents, the prevailing party shall be entitled to reasonable attorneys' fees and court costs as determined by the Court.

IN WITNESS WHEREOF, the parties hereunto have signed this agreement the day and year first above written.

SELLER:

BUYER:

\_\_\_\_\_  
Nancy Guggisberg

\_\_\_\_\_  
Dawnafe Whitesinger, Chairwoman,  
Navajo County

Attest:

\_\_\_\_\_  
Melissa Buckley,  
Board of Supervisors Clerk

Approved as to Form:

\_\_\_\_\_  
Brad Carlyon, Navajo County Attorney

STATE OF ARIZONA                    )  
  ) ss  
COUNTY OF Maricopa                )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by  
Nancy Guggisberg.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## EXHIBIT A

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 8 NORTH, RANGE 23 EAST OF THE GILA AND SALT RIVER MERIDIAN, NAVAJO COUNTY, ARIZONA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF TRACT 'A' AS SHOWN ON THE PLAT OF PINETOP LAKES UNIT TWO, AS RECORDED IN BOOK 11 OF PLATS, PAGE 17, IN THE NAVAJO COUNTY RECORDER'S OFFICE, SAID CORNER BEING MONUMENTED BY A REBAR W/NO ID;

THENCE ALONG THE NORTH LINE OF SAID TRACT 'A', NORTH 89 DEGREES 57 MINUTES 54 SECONDS EAST A DISTANCE OF 119.02 FEET TO A REBAR W/PLASTIC CAP LS16626, AND BEING THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTH LINE, SOUTH 89 DEGREES 59 MINUTES 36 SECONDS EAST A DISTANCE OF 85.22 FEET TO A REBAR W/PLASTIC CAP LS13013;

THENCE SOUTH 00 DEGREES 00 MINUTES 24 SECONDS WEST A DISTANCE OF 70.59 FEET;

THENCE SOUTH 31 DEGREES 27 MINUTES 04 SECONDS EAST A DISTANCE OF 124.27 FEET;

THENCE SOUTH 14 DEGREES 49 MINUTES 17 SECONDS EAST A DISTANCE OF 130.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SUNSET CIRCLE, AS SHOWN ON SAID PINETOP LAKES UNIT TWO PLAT;

THENCE SOUTH 45 DEGREES 34 MINUTES 45 SECONDS WEST, ALONG THE NORTH RIGHT-OF-WAY LINE OF SUNSET CIRCLE, A DISTANCE OF 106.82 FEET;

THENCE NORTH 04 DEGREES 57 MINUTES 27 SECONDS EAST A DISTANCE OF 76.28 FEET;

THENCE NORTH 18 DEGREES 09 MINUTES 11 SECONDS WEST A DISTANCE OF 128.75 FEET;

THENCE NORTH 25 DEGREES 01 MINUTES 25 SECONDS WEST A DISTANCE OF 61.43 FEET TO A REBAR W/PLASTIC CAP LS16626;

THENCE NORTH 19 DEGREES 53 MINUTES 04 SECONDS WEST A DISTANCE OF 130.86 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 0.55 ACRES MORE OR LESS.

**EXHIBIT B**

**WHEN RECORDED RETURN TO:**

William Bess  
Navajo County Flood Control District  
100 East Code Talker Drive  
Holbrook, AZ 86025

Space above this line for Recorder's Use

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**EASEMENT FOR OVERLAND FLOWAGE**

**Grantors:** NANCY GUGGISBERG

**Grantee:** NAVAJO COUNTY FLOOD CONTROL DISTRICT, a political subdivision of the State of Arizona

**Easement Area:** As described on Exhibit C attached hereto.

**Prior Recorded Documents:** None known

**KNOW ALL PERSONS BY THESE PRESENTS:**

That NANCY GUGGISBERG, ("Grantor"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby sell, grant, and convey unto NAVAJO COUNTY FLOOD CONTROL DISTRICT, ("Grantee"), a perpetual Easement for Overland Flowage for the purpose of providing for surface water flowage from Grantee's property, over, under, through and across the following described real estate in Navajo County, Arizona:

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 8 NORTH, RANGE 23 EAST OF THE GILA AND SALT RIVER MERIDIAN, NAVAJO COUNTY, ARIZONA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF TRACT 'A' AS SHOWN ON THE PLAT OF PINETOP LAKES UNIT TWO, AS RECORDED IN BOOK 11 OF PLATS, PAGE 17, IN THE NAVAJO COUNTY RECORDER'S OFFICE, SAID CORNER BEING MONUMENTED BY A REBAR W/NO ID;

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THENCE CONTINUING ALONG SAID NORTH LINE, SOUTH 89 DEGREES 59 MINUTES 36 SECONDS EAST A DISTANCE OF 85.22 FEET TO A REBAR W/PLASTIC CAP LS13013;

THENCE SOUTH 00 DEGREES 00 MINUTES 24 SECONDS WEST A DISTANCE OF 70.59 FEET;

THENCE SOUTH 31 DEGREES 27 MINUTES 04 SECONDS EAST A DISTANCE OF 124.27 FEET;

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THENCE NORTH 19 DEGREES 53 MINUTES 04 SECONDS WEST A DISTANCE OF 130.86 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 0.55 ACRES MORE OR LESS.

The above described real estate shall be referred to hereinafter as the "Easement Area". The Easement Area shall provide for the flow of surface water over and across the Easement Area for the purpose of draining the real property located within the Navajo County Flood Control District. The easement area shall be for the exclusive use of Navajo County Flood Control District.

This Easement for Overland Flowage shall be subject to the following terms and conditions:

- 1. STRUCTURES AND OBSTRUCTIONS.** Grantors and their successors and assigns shall not erect or cause to be placed on the Easement Area any structure, building, solid wall fence, material, device, thing or other matter, or plant or permit to grow any hedge or other vegetative growth, which could obstruct, impede or otherwise interfere with the flow of surface water over or the maintenance of a storm sewer.
- 2. CONSTRUCTION OF DRAINAGE IMPROVEMENTS.** Grantee and their successors and assigns shall be responsible for the design and construction of the drainage improvements to be placed in the Easement Area. Grantors and their successors and assigns shall not modify or improve any structure, building, solid wall fence, material, device, thing or other matter placed in the Easement Area by the Grantee. Grantee has the exclusive right to place any structure, building, solid wall fence, material, device, thing or other matter in the Easement Area. Such improvements shall be constructed in a manner necessary to provide adequate and proper drainage for the Navajo County Flood Control District.
- 3. MAINTENANCE OF EASEMENT.** Grantees and their successors and assigns shall keep and preserve the Easement Area in good repair and condition at all times, and shall

remove all dead trees, shrubs, brush and trash which might obstruct or impede the flow of surface water.

4. **REAL ESTATE TAXES** Grantors shall pay all real estate taxes on Easement Area.
5. **RIGHT OF ACCESS** Grantee shall have the right of ingress and egress to access the Easement Area as herein described to perform drainage work (including, but not limited to, the right to use vehicle and equipment to remove any unauthorized obstructions or structures placed or erected on the Easement Area and the right to improve, repair and maintain the Easement Area in whatever manner necessary to provide adequate and proper drainage and to protect the public health, safety and general welfare). Grantee shall have immediate access to the Easement Area.
6. **EASEMENT RUNS WITH LAND.** This Easement shall be perpetual, permanent and shall run with the land and be binding on Grantors and their successors and assigns.
7. **ENTIRE AGREEMENT** Grantors and Grantee agree that this Easement Agreement contains all of the agreements, promises and understandings between Grantors and Grantee. No oral agreements, promises or understandings shall be binding upon either Grantors or Grantee in any dispute, controversy or proceeding at law. Any addition, variation or modification to this Easement Agreement shall be void and ineffective unless made in writing and signed by the parties hereto.
8. **CONSTRUCTION OF DOCUMENT** Grantors and Grantee acknowledge that this document shall not be construed in favor of or against the drafter by virtue of said party being the drafter.
9. **PARTIAL INVALIDITY** If any term of this Easement Agreement is found to be void or invalid, then such invalidity shall not affect the remaining terms of this Easement Agreement, which shall continue in full force and effect.
10. **COUNTERPARTS** This Easement Agreement may be executed in counterparts, which taken together, shall be considered on and the same agreement.
11. **APPLICABLE LAW** This Easement Agreement shall be construed shall be governed, interpreted, construed and regulated by the laws of the State where the Easement is located. The parties agree that the venue for any litigation regarding this Agreement shall be Navajo County, Arizona.

Grantors do hereby covenant with Grantee that Grantors hold the Easement Area by title in fee simple and that Grantors have good and lawful authority to convey this Easement for Overland Flowage to Grantee.

DATED this \_\_\_\_ day of April, 2015.

\_\_\_\_\_  
NANCY GUGGISBERG

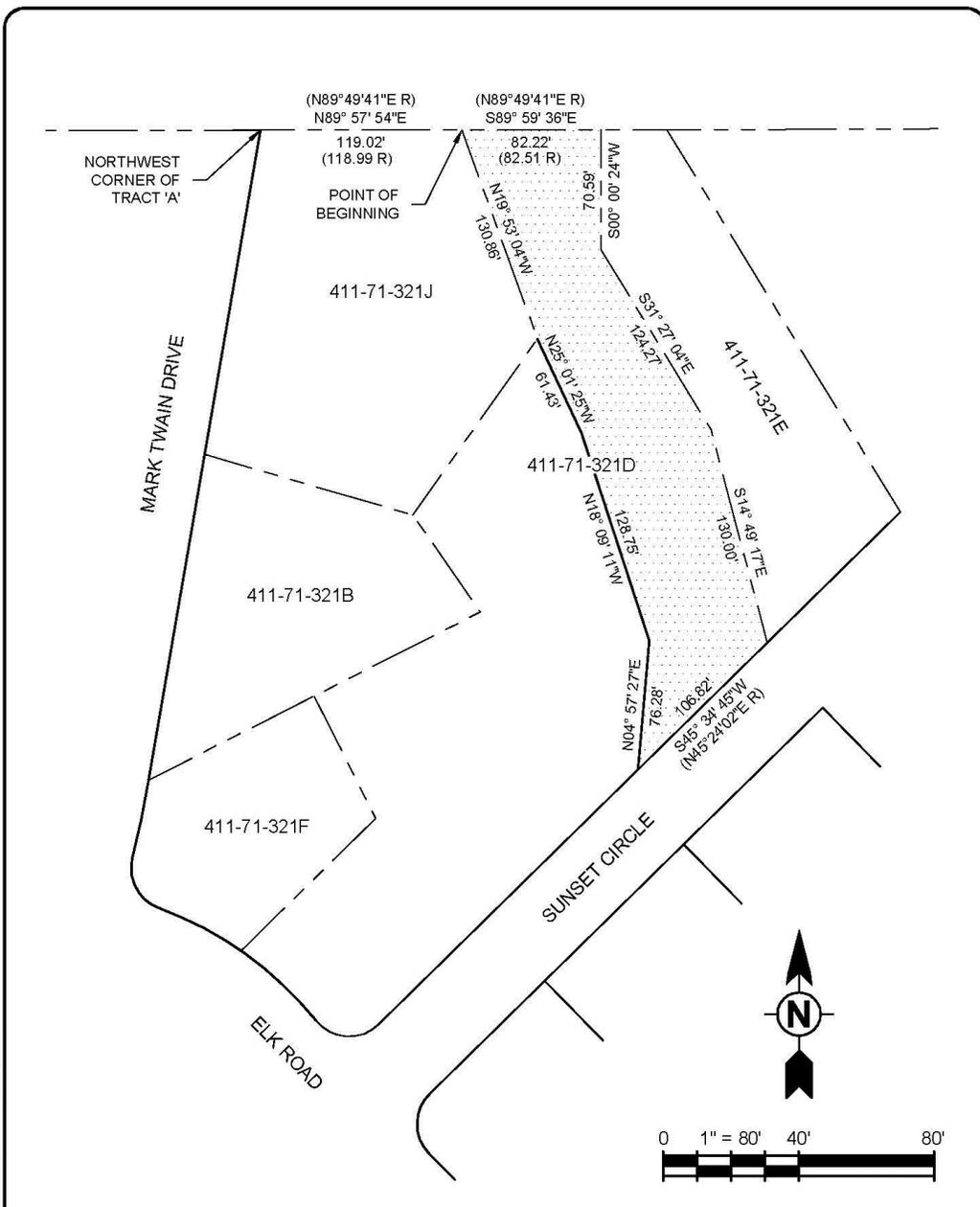
STATE OF ARIZONA            )  
  ) ss  
COUNTY OF Maricopa        )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by  
Nancy Guggisberg.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

# EXHIBIT C (Easement Area)



4/9/2015 4:26:13 PM - DRAWING3.DWG - FLAKE, WILL


**TETRA TECH**  
 www.tetrattech.com  
 1801 W. DEUCE OF CLUBS, SUITE 230  
 SHOW LOW, AZ 85901  
 Phone: (928) 537-7218 Fax: (928) 537-8422

Navajo County  
 PINTEOP COUNTRY CLUB  
 DRAINAGE EASEMENT  
 EXHIBIT

Project No.:	133-09536-13001
Date:	4/9/15
Designed By:	WWF
Supplemental	
<b>1</b>	

Copyright: Tetra Tech

Bar Measures 1 inch