



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

Requested Board Meeting Date: 05/05/2015

or Procurement Director Award ☐

Contractor/Vendor Name (DBA): Tucson Audubon Society

Project Title/Description:

Agua Caliente Nature Shop

Purpose:

Agreement authorizes TAS to operate a gift shop within Agua Caliente Park

Procurement Method:

Program Goals/Predicted Outcomes:

To initiate a private/public partnership for benefit of Pima County residents.

Public Benefit:

The Tucson Audubon Nature shop at Agua Caliente park is a direct service to the many visitors who have come to the park for watchable wildlife experiences. Agua Caliente Park is one of the top birdwatching spots in the Tucson area and is recognized as a premier watchable wildlife site nationwide. Local and out-of-town visitors can purchase resources to enhance their experience and get information, tips and viewing strategies from the friendly Audubon staff in the shop. The relationship at Agua Caliente Park with Tucson Audubon provides the county a platform for other cooperative projects related to conservation projects, land restoration, public watchable wildlife and educational programs as well as tapping into their expertise in conservation planning at the county wide level.

Metrics Available to Measure Performance:

TAS will provide annual report delineating gift shop sales, number of participants served, TAS volunteer hours worked, etc.

Retroactive:

Procure Dept 04/09/15 PM04:47

Ver. - 1
Vendor - 1
Pgs. 8

To: COB 4.22.15
(3)

Original Information

Document Type: CTN Department Code: PR Contract Number (i.e., 15-123): 15-136
Effective Date: 05/05/2015 Termination Date: 04/30/2016 Prior Contract Number (Synergen/CMS): _____
☒ Expense Amount: \$ 0.00 ☒ Revenue Amount: \$ 0.00
Funding Source(s): General Fund

Cost to Pima County General Fund: _____

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards
Were insurance or indemnity clauses modified? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards
Vendor is using a Social Security Number? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
Amendment No.: _____ AMS Version No.: _____
Effective Date: _____ New Termination Date: _____
☐ Expense ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$ _____
Funding Source(s): _____

Cost to Pima County General Fund: _____

Contact: Robert Padilla

Department: Natural Resources, Parks and Recreation Telephone: 520-724-5235

Department Director Signature/Date: [Signature] 4/8/15

Deputy County Administrator Signature/Date: [Signature] 4/8/15

County Administrator Signature/Date: [Signature] 4/8/15
(Required for Board Agenda/Addendum Items)

NOCTIN-PR-15000000000000000000 136

This number must appear on all invoices, correspondence and documents pertaining to this contract.

This Agreement is entered effective as of the _____ day of (Month), 2015 (the "Effective Date"), by and between Pima County, a body corporate and politic of the state of Arizona (hereinafter "County"), and the Tucson Audubon Society, an Arizona non-profit corporation (hereinafter "Audubon").

- A. County owns Roy P. Drachman-Agua Caliente Park located at 12325 E Roger Road, in Tucson, Arizona (the "Park").
- B. Audubon is a non-profit corporation organized to promote and encourage conservation and habitat protection. Audubon is exempt from the payment of federal income tax under Section 501(c)(3) of the Internal Revenue Code.
- C. Audubon has established pursuant to an earlier agreement, and desires to continue, the operation of a "nature shop" consisting of a specialty store with books and nature-related items within the Visitors Center at the Park for the enjoyment of the citizens of and visitors to Pima County.
- D. County has the authority, under A.R.S. § 11-933, to enter into agreements with private legal entities for the operation or administration of a public park.

1. **Premises.** County hereby authorizes Audubon to occupy and use, under the terms and conditions and for the purposes set forth herein, 350 square feet of space within the Visitors Center at the Park as shown on the attached Exhibit A, (the "Premises"), together with the non-exclusive right to use certain designated parking areas associated with the Premises.
2. **Term.** The term of this Agreement commences on the Effective Date and terminates on the last day of April, 2016 (the "Initial Term"). Provided that Audubon is not in default hereunder, Audubon may request County to extend the term of this Agreement for four additional one (1) year periods by giving written notice to County of its desire to so extend the Agreement at least thirty (30) days and no more than one hundred eighty (180) days prior to expiration of the Initial Term. County will consider Audubon's performance under this Agreement, including but not limited to Audubon's compliance with the Accounting and Reporting provisions in section 17 and Audubon's ongoing cooperation with County's Environmental Education Staff in determining whether to grant Audubon an extension of this Agreement. Any extension of the Initial Term of this Agreement is at the sole discretion of County.
3. **Rent.** Audubon will pay zero rent during the term of this Agreement.
4. **Non-Profit Tax-Exempt Status.** Audubon will at all times during the term of this Agreement be a non-profit organization exempt from taxation under Section 501(c)(3) of the United States

Internal Revenue Code (26 USC § 501(c)(3)). On an annual basis, Audubon shall provide County a copy of Audubon's letter of exemption from the U.S. Internal Revenue Service granting Audubon such tax exempt status, and any analogous ruling from the Arizona Department of Revenue. Audubon shall notify County in writing and provide County with a copy of any ruling or inquiry from any governmental authority affecting or potentially affecting such status.

5. **Audubon's Use of the Premises.** Audubon shall use the Premises for the sole purpose of operating a "nature shop" consisting of a specialty store with books and nature-related items.
 - A. Expense of Audubon. Audubon will conduct all of its operations at the Premises at its own expense and without contribution from County. Audubon will not suggest, state or imply that County will participate, guarantee or otherwise assist in any financial obligation undertaken by Audubon with respect to its operations on the Premises.
 - B. Compliance with Laws. Audubon will comply with all applicable federal, state, and local laws, statutes, ordinances, rules, regulations, standards, policies, and executive orders with respect to its operations on the Premises, including Pima County noise ordinances.
 - C. Alcohol Prohibited. Possession, consumption, or sale of alcoholic beverages is not permitted on the Premises. *No exceptions shall be permitted.*
 - D. Product Review. County has the right to review and approve all products sold on the Premises. Audubon will offer for sale only those items consistent with the mission and purpose of Audubon as a non-profit corporation dedicated to resource conservation and protection.
6. **Improvements to Premises.** All improvements made to the Premises by Audubon must receive the prior written approval of County. Improvements shall be constructed in a good and workmanlike manner using new materials, in compliance with the approved plans and specifications and with all applicable laws, rules, and regulations, including all applicable building, electrical and other codes.
7. **Condition of Premises/Maintenance & Repair.** Audubon accepts the Premises in an "as is" condition. Audubon will maintain the interior portions of the Premises at all times hereunder in a good, clean, safe and sanitary condition, at its sole cost and expense, including making any necessary repairs or replacements to appliances or furnishings. Audubon will leave the Premises, upon the expiration or earlier termination of this Agreement, in a condition at least as good as upon the Effective Date, reasonable wear and tear excepted. County will maintain and repair the exterior portions of the Premises, including the roof, exterior walls, and sewer, water and electrical lines outside the building.
8. **Utilities.** Audubon will pay for telephone and cable services. County will pay for electricity used on the Premises, up to a reasonable amount. Audubon must take reasonable steps to conserve electricity used.
9. **Signs.** Audubon may affix and maintain upon the Premises such signs relating to the services provided on the Premises as Audubon deems appropriate; provided, however, if such signs

are visible outside of the Premises, such signs must first receive the written approval of the Director of the Pima County Natural Resources, Parks and Recreation Department or his designee, as to type, size, color, location, copy nature and display qualities; provided further, however, that all signs utilized by Audubon on or about the Premises, whether visible outside the Premises or not, must at all times comply with the Pima County Sign Code and will be installed and maintained at Audubon's sole cost. Audubon will immediately remove any and all signs placed by Audubon on the Premises upon termination of this Lease for any reason, and Audubon will repair any damage resulting from such removal immediately at its sole cost. Audubon will pay all costs for construction, erection, installation, maintenance, and repair of any sign either currently in existence or to be erected or installed or otherwise placed on the Premises. Audubon will, through coordination with the Pima County Natural Resources Parks and Recreation Department, identify the Premises as belonging to Pima County in signs placed at the entrances to the Premises and will acknowledge the contribution of Pima County in providing the Premises to Audubon in Audubon's annual report, on Audubon's website and in Audubon's publications.

10. **Environmental.** Audubon will not cause or permit any hazardous or toxic substance or material to be brought upon, kept, or used in or about the Premises by Audubon, its agents, employees, contractors or invitees. Audubon will fully comply with all environmental rules and regulations with respect to its operations on the Premises and will remediate and clean up any contamination of the Premises caused by Audubon occurring during the term of this Agreement at Audubon's sole cost and expense.
11. **Accounting and Reporting Provisions.** At least ninety (90) days prior to the expiration of any term of this Agreement, Audubon will provide to County a copy of Audubon's form 990 non-profit federal income tax return for the previous year together with a report of the total annual income of Audubon's gift shop on the Premises, to include number of customers served, number of volunteers working at the gift shop and total volunteer hours expended at the Premises on behalf of Audubon. As part of the required report, Audubon will provide County a financial review of its operations at the Premises with an opinion from a Certified Public Accountant.
12. **Entry by County.** County may enter the Premises to inspect the Premises and Audubon's operations thereon.
13. **Security.** Audubon is responsible for securing the Premises and preventing any unlawful or unauthorized use thereof. When the Premises are not open to the Public, they will be secured in order to prevent unsupervised use or entry into the Premises. Audubon will contact law enforcement authorities when it appears necessary to protect the Premises and any persons or property thereon, and will assist in any resulting prosecution.
14. **Audubon not an Agent of County.** Audubon is not an agent of County for any purpose under this Agreement or otherwise. Audubon will control its activities on the Premises, and County will not control those activities. Audubon's employees and servants are not under the control of County.

15. **Approvals and Notices.** Where the approval of County is required in any section of this Agreement, that approval will mean approval of the Director of Pima County Natural Resources, Parks & Recreation Department. Any notices required hereunder must be delivered personally or by certified mail, directed as follows:

If to County:

Christopher C. Cawein, Director
Pima County Natural Resources, Parks
& Recreation
3500 W. River Road
Tucson, Arizona 85741

If to Audubon:

Karen Fogas
Executive Director
Tucson Audubon Society
300 E. University Blvd, #120
Tucson, AZ 85705

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

17. **Insurance.**

- A. Types of Insurance Required. Audubon shall procure, prior to the Effective Date, and maintain throughout the term of this Agreement, the following insurance from an insurance company or companies approved by County:
- (1) Commercial general liability insurance with limits of \$1,000,000 combined single limit, per occurrence.
 - (2) Automobile liability insurance covering all vehicles used on the Premises, with limits not less than \$1,000,000 combined single limit.
 - (3) Workers' compensation insurance, including employer's liability insurance, if required by law.
 - (4) Property insurance for the full insurable value of the personal property owned by, or under the control of, Audubon.
- B. Certificates. Audubon shall provide County with copies of certificates of insurance showing the current status of all insurance policies. Audubon shall, in addition, provide full, certified copies of all required insurance policies when requested by County in writing. All certificates of insurance shall provide for a guaranteed thirty (30) days written notice of cancellation, non-renewal, or material change. Any modifying language in a certificate of insurance must be deleted. County shall be an "additional insured" on all liability insurance policies.
- C. Changes to Insurance Requirements. County may review the coverage, form, and amount of insurance required hereunder at any time. County shall notify Audubon in writing of any changes to the aforesaid insurance requirements, and Audubon shall have sixty (60) days to comply with the requirements as changed.

18. **Indemnification.** To the fullest extent permitted by law, Audubon will defend, indemnify, and hold harmless County, its officers, agents, and employees, from and against any and all claims, liabilities, losses, damage, cost and expense, including but not limited to reasonable attorney's fees and/or litigation expenses, arising out of or resulting from the conduct or management of the Premises, or any accident, injury, damage, or violation of law whatsoever occurring in or at the Premises allegedly caused in whole or in part by any act or omission of Audubon or anyone directly or indirectly employed by it, its agents, representatives, contractors, subcontractors, licensees, or anyone for whose acts it may be liable, regardless of whether it is caused in part by the negligent act or omission of County or any of its officers, agents, or employees. To the fullest extent permitted by law, Audubon shall also indemnify County against any claim, liability, damage, cost, or expense arising out of the presence, disposal, or release of any hazardous substance, hazardous waste, hazardous materials, or petroleum products or by products on, from or under the Premises during the term of this Agreement.
19. **Non-Discrimination.** Audubon will comply with applicable state and federal rules concerning equal employment opportunity and non-discrimination.
20. **Choice of Law.** The laws of the State of Arizona apply to any action relating to this Agreement. Any court action arising under this Agreement must be brought and maintained in a court in Pima County, Arizona.
21. **Default/Termination.** Either party may present written notice of default or non-performance to the other party. Upon failure of the non-performing or defaulting party to remedy the defect within thirty (30) days of such notice, the non-breaching party may terminate this Agreement. Both parties may pursue any other remedies provided by law for the breach of this Agreement. No right or remedy conferred or reserved is intended to be exclusive of any other right or remedy, and each is cumulative and in addition to any other right or remedy conferred or reserved in this Agreement. In the event of termination for Audubon's default, County may enter the premises to take possession with or without process of law; such entry will not constitute forcible entry or detainer, nor will it cause a forfeiture of payments due under this Agreement, nor a waiver of any covenant or condition in this Agreement that is to be performed by Audubon. Audubon will make no claim of any kind against County, its officers, employees or other representatives by reason of such acts.
22. **Personal Property.** Audubon will maintain a current inventory of all items of personal property that it owns and places or maintains on the Premises. Any items of personal property left on the Premises upon expiration or earlier termination of this Agreement will become the property of County, and County may sell or otherwise dispose of said items without liability to Audubon.
23. **Liens.** Audubon will timely pay all contractors, subcontractors, mechanics, laborers, or materialmen providing materials or services with respect to the Premises, and will not permit any lien to attach to the Premises or any interest therein. Audubon will indemnify and defend County against all legal costs and charges resulting from any such lien.
24. **Non-Waiver.** The failure of either party to insist in any one or more instances upon the full and complete performance of any of the terms and provisions of this Agreement to be performed by

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

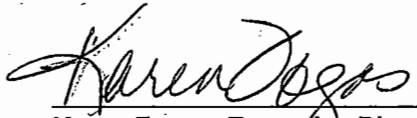
25. **Non-Assignment.** Any attempted assignment of this Agreement by either Party hereto without prior written consent from the other Party is void. This Agreement is binding on any and all successors and assigns to County and Audubon. Audubon will not allow any other person or entity to use or occupy any portion of the Premises without the prior written consent of County. In the event that County approves such use or occupancy by a for-profit entity, Audubon will charge such entity the fair market value of such use or occupancy, and will pay all such amounts received to County.
26. **Entire Agreement.** This Agreement constitutes the entire contract between County and Audubon with respect to the Premises and no modification hereof is binding unless in writing and signed by both parties.

EXECUTED this _____ day of _____, 2015.

County: PIMA COUNTY,

Audubon: TUCSON AUDUBON
SOCIETY

Sharon Bronson, Chair, Board of Supervisors


Karen Fogas, Executive Director

Date: _____

Date: 3/26/15

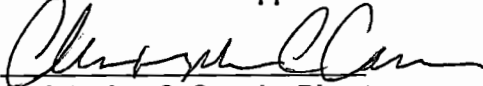
ATTEST:

Robin Brigode, Clerk of the Board of Supervisors

Approved as to form


Tobin Rosen, Deputy County Attorney

Recommended for Approval:

A handwritten signature in black ink, appearing to read "Christopher Cawein", written over a horizontal line.

Christopher C. Cawein, Director,
Pima County Natural Resources, Parks and Recreation

2-11-00

