



Contract Number: CTN.FM.12.X 149-01  
Effective Date: 12-9-14  
Term Date: 12-8-2016  
Cost: \$480. -  
Revenue: \_\_\_\_\_  
Total: \_\_\_\_\_ NTE: \_\_\_\_\_  
Renewal By: 9-1-16  
Term: 12-8-16  
Reviewed by: [Signature]

## BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: December 9, 2014

### **ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:**

*This Use Agreement will allow the Menlo Park Neighborhood Association to use the grounds and guest house at 17 N. Linda Avenue in Tucson for rainwater harvesting and gardening projects while maintaining and cleaning the property. Access to the interior of the main house is excluded and the guest house can only be used for storage of small garden tools or supplies. Due to financial constraints the Facilities Management Department pays the water bill from unit #353 which is only for payment of utility bills, since there isn't any maintenance funds budgeted for this property.*

CONTRACT NUMBER (If applicable) CTN FM 1200000000000000149

### **STAFF RECOMMENDATION(S):**

*The Facilities Management Department recommends approving this Use Agreement to allow the Menlo Park Neighborhood Association use and maintain the 17 N. Linda Avenue residential property while reducing the liability to Pima County.*

CORPORATE HEADQUARTERS: \_\_\_\_\_

Page 1 of 2

To: CoB - 11-26-14  
Ver. 4  
Vendor-1  
Agenda 12-9-14  
(11)  
PJS 8

Procure Dept 11/21/14 PM 01:33

**CLERK OF BOARD USE ONLY: BOS MTG. \_\_\_\_\_**

**ITEM NO. \_\_\_\_\_**

**REVENUE TO PIMA COUNTY: \$0.00**

**COST TO PIMA COUNTY: \$0.00**

**FUNDING SOURCE(S): General Fund**

(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

**Advertised Public Hearing:**

<input type="checkbox"/>	<b>YES</b>	<input checked="" type="checkbox"/>	<b>NO</b>
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**Board of Supervisors District:**

1	<input type="checkbox"/>	2	<input type="checkbox"/>	3	<input type="checkbox"/>	4	<input checked="" type="checkbox"/>	5	<input type="checkbox"/>	All	<input type="checkbox"/>
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**IMPACT:**

**IF APPROVED: The Menlo Park Neighborhood Association will continue to maintain and clean up the grounds of the 17 N. Linda Avenue property and offer educational water harvesting and gardening information for the benefit of their neighbors and other Pima County residents.**

**IF DENIED: The Menlo Park Neighborhood Association would be unable to provide educational water harvesting and gardening demonstrations to their neighborhood residents and citizens of Tucson. The property could be damaged or vandalized due to a lack of maintenance and presence of neighbors.**

**DEPARTMENT NAME: Facilities Management**

**CONTACT PERSON: Melissa Loeschen      TELEPHONE NO.: 724-8230**

## USE AGREEMENT

**CONTRACT**

AMENDMENT NO. 01

01

This number must appear on all invoices, correspondence and documents pertaining to this contract. It is made and entered into by an

1. **PARTIES.** This Use Agreement ("Agreement") is made and entered into by and between PIMA COUNTY, a political subdivision of the State of Arizona ("County"), and the MENLO PARK NEIGHBORHOOD ASSOCIATION, a voluntary unincorporated association ("Association").

## 2. BACKGROUND AND PURPOSE.

2.1. County owns the real property located at 17 N Linda, Tucson, Arizona 85745 (the "Property"). The Property has improvements consisting of a main house (the "Main House") and a small guest house (the "Guest House"), as designated on Exhibit A. The Main House is uninhabitable.

2.2. Association has historically utilized the Property for various neighborhood purposes, including hosting special neighborhood events, and carrying out horticultural projects such as rain harvesting. Association previously obtained a grant that it used to sponsor the creation of a mural on the rear wall of the Property.

2.3. Association desires to continue to use the Guest House and the remainder of the Property, but not the Main House (the Property, including the Guest House but excluding the Main House, is hereinafter referred to as the "Premises") until such time as County can dispose of the Property in a manner that results in a sustainable use of the Property consistent with the character of the neighborhood.

2.4. The previous Use Agreement between the Parties with respect to the Premises expired as of October 31, 2012 but Association has continued to use the Premises under the terms of that prior agreement. County and Association agree that Association may use the Premises on the terms and conditions, and for the limited purposes, set forth in this Agreement.

### 3. TERM.

3.1. The term of this Agreement will be deemed for all purposes to have commenced as of the date it is fully executed by all parties and will continue for a period of two (2) years, unless it is terminated early pursuant to the terms of this Agreement, or the Parties agree, in writing, to extend it.

3.2. Notwithstanding anything in this Agreement to the contrary, either party may terminate this Agreement at any time, without cause, by giving thirty (30) days' notice to the other Party.

3.3. Association shall vacate the Premises and the Property by the end of the term and shall leave the Premises and the Property in a good and clean condition and shall return the keys to the Guest House to County by hand delivery to a County representative or at the address below.

4. **RENT.** Association's agreement to use the Premises and provide rainwater harvesting on the Premises according to the terms and conditions of this Agreement constitutes consideration for this Agreement, and no rent shall be due during the term of this Agreement.

5. **USE OF PREMISES.**

5.1. Association may use the Premises during daylight hours only for rainwater harvesting and related projects, site clean-up and gardening, meetings of members of Association, and for special events that are specifically approved on a case-by-case basis by the County Administrator and Risk Management Department as set forth below.

5.2. Association may use the Guest House for storage of rainwater harvesting equipment, gardening tools, and for other passive uses related to uses of the Premises permitted by this Agreement.

5.3. If Association wishes to use the Premises for a purpose not specifically permitted in this Agreement (a "Special Event") it must request permission for the Special Event at least forty-five (45) days in advance. The request must be in writing, delivered as set forth below, and must explain in detail the intended use, including the date and time; the activities; who will be participating; how many people are anticipated to attend; how sanitation, parking and traffic needs are to be accommodated; and who is responsible for site cleanup. County will not be deemed to have approved the Special Event unless it is approved in writing by the County Administrator and the County Risk Management Department. If the Special Event is approved, then Association may hold the Special Event in compliance with the conditions described in its request, along with any additional conditions imposed as part of the County's approval. The County will be under no obligation to approve any particular Special Event, nor will approval of one Special Event constitute approval of, or be deemed to obligate the County to approve, any subsequent Special Event.

6. **ALTERATIONS AND ADDITIONS.** Association shall not make or cause to be made any alterations, additions or improvements to the Property without first obtaining the written approval of the County Administrator, except that Association may cleanup and care for the Premises as set forth in this Agreement.

7. **NO OTHER USE.** Association shall not give anyone else permission to use the Property or any portion of it, except as expressly permitted in this Agreement.

8. **NO LIENS.** Association shall keep the Premises free and clear of any and all liens, claims, and encumbrances of any type whatsoever.

9. **UTILITIES.** County shall pay monthly electric utility bills up to a maximum of Twenty Dollars (\$20.00) per month. Association is responsible for electric utility bills for the Property in excess of Twenty Dollars (\$20.00) per month. Association shall be responsible for all water bills for the Property. In the event of an unexpectedly high water bill, if Association can show that it is a result of a water line break or other cause completely out of Association's control, and unrelated to Association's use of the Property, Association will not be held liable for payment of any amount by which the bill exceeds Fifty Dollars (\$50.00). Association must immediately report any continuously running water or leaks in the water pipes/system to County.

10. **"AS IS" CONDITION.** Association understands, agrees to, and accepts the Premises and the fixtures therein in "as is" condition without warranty of any sort or nature.

**11. SECURITY AND MAINTENANCE.**

11.1. Association shall provide cleaning and maintenance for the Premises. Association shall water vegetation, trim and remove overgrowth and weeds, remove trash and rubbish at Association's expense, and keep the Premises and environs in a reasonably neat and clean condition safe from brushfire. Association will meet with representatives of County Facilities Management and/or Risk Management Departments to tour the Property and create a maintenance plan for the Premises, including a list of minor improvements such as spray-painting grade changes and trimming trees which Association will make/perform to reduce risks on the Premises in a time frame that is mutually acceptable to both parties.

11.2. Association shall not create or knowingly permit any individual to create a hazardous condition on the Property. Association shall refer and report hazards on the Property to Pima County Facilities Management. If there is no danger to Association, Association shall take necessary temporary action to insure safety and security; for example, sweep up and dispose of glass, block or provide visible markers or barricades to safety hazards such as holes or erosion.

11.3. Association will not use the Property for any unlawful purpose or commit any unlawful act on the Property, or knowingly permit anyone else to commit any unlawful act on the Property. Association will immediately notify County, and the appropriate law enforcement agency, of any such suspected activities.

**12. HAZARDOUS MATERIALS.** Association shall not store or dispose of motor oil, anti-freeze, vehicle batteries, or any other contaminant, hazardous, or potentially hazardous substance or material on the Property or environs.

**13. ACCESS TO PROPERTY.** County may enter the Property at any time for inspection, repair, or maintenance, as deemed necessary by County.

**14. TRESPASS.** Only authorized vehicles, persons, and personnel of Association and County are to use the Premises. In the event of any trespass on the Premises, Association will use discretion to (i) determine the purpose or reason of the entry or trespass; and (ii) if entry is a trespass, call the appropriate law enforcement agency. *Association shall not place any individual in physical danger or risk.*

**15. NO MONETARY REMUNERATION.** Members of Association will not receive monetary remuneration or employee benefits, nor in any other way will such members be considered an employee of Pima County.

**16. LIABILITY.** County assumes no liability for personal injury or property damage resulting from Association or Association's guests or invitees using the Property during the term of this Agreement.

**17. DAMAGE TO OR DESTRUCTION OF THE PROPERTY.** In the event the improvements on the Premises are partially damaged or totally destroyed by fire, flood, accident or acts of God, County shall have the option to repair/rebuild said improvements or to terminate this Agreement by delivering written notice of immediate termination to Association. Association shall vacate the Property and immediately notify County of such vacation.

**18. INSURANCE & RISK OF LOSS.** Association assumes all liability for personal

injury, property damage or loss, and insurable risk arising out of Association's use of the Property.

19. **INDEMNIFICATION & WAIVERS.** By signing this Agreement and accepting the benefits thereof, Association will indemnify and hold harmless County, its officers, departments, agents and employees from and against all suits, actions, legal or administrative proceedings, claims, demands or damages resulting from Association's use of the Property during the term of this Agreement. All persons who use the Premises pursuant to this Agreement, whether members of Association, or persons entering on the Premises during a Special Event, shall sign a release in the form of Exhibit B, which Association will deliver to County within seven (7) days after the Special Event. Failure of Association to obtain & deliver waivers to County shall constitute a breach of this Agreement.

20. **REMEDY.** If Association breaches any term or condition of this Agreement, County may terminate this Agreement with five days' notice to Association. All material brought on the Premises by any members of Association must be removed from the Premises before the fifth day, and County will rekey the Premises and any fenced or gated entrance to the Property.

21. **NOTICE.** Whenever this Agreement requires 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 County:	Director, Pima County Facilities Management Department 150 W. Congress, 3rd Floor Tucson, AZ 85701
With a copy to:	District 5, Pima County Board of Supervisors 130 W. Congress, 11 <sup>th</sup> Floor Tucson, Arizona 85701
To Association:	Menlo Park Neighborhood Association Gene Einfrank 212 S. Avenida del Sembrador Tucson, Arizona 85745

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.

22. **HEADINGS.** The descriptive headings used in this Agreement are for convenience only and shall not be used in construing this Agreement.

23. **ENTIRE AGREEMENT.** This Agreement is intended by the parties as the final expression of the parties with respect to the subject matter hereof and supersedes any prior or written or oral agreements.

24. **SEVERABILITY.** The unenforceability, invalidity or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid or illegal.

25. **CONFLICTS OF INTEREST.** This Agreement is subject to provisions of A.R.S. § 38-511 regarding the cancellation of contracts involving conflict of interest.

26. **NONDISCRIMINATION.** Association will not discriminate against any County employee, client, or any other individual in any way involved with the County, because of race, age, creed, color, religion, sex, disability, or national origin in the course of carrying out Association duties pursuant to this Contract. Association agrees to comply with the provisions of Arizona Executive Order 99-4, which are hereby incorporated into this contract by reference as if set forth in full.

27. **NON-WAIVER.** The failure of either party to insist on any one or more instances upon the full and complete performance of any of the terms and conditions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future.

28. **COMPLIANCE WITH LAWS.** The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract shall be brought in a court of the State of Arizona in Pima County.

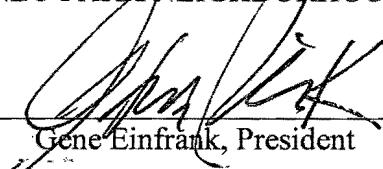
29. **REMEDIES.** Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

30. **ATTORNEY'S FEES.** In the event any action, suit or proceeding at law or in equity is instituted with respect to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, expenses and court costs incurred.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK**

In witness whereof, the Parties have executed this Agreement the day and year set forth below.

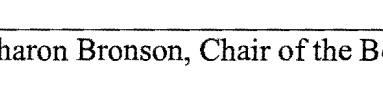
MENLO PARK NEIGHBORHOOD ASSOCIATION

By 

Gene Einfrank, President

Dated: 11/19/14

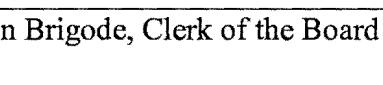
PIMA COUNTY, A BODY POLITIC

By 

Sharon Bronson, Chair of the Board of Supervisors

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

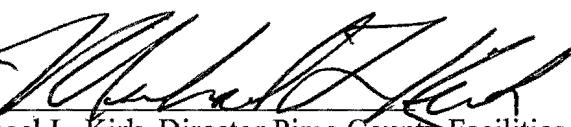
ATTEST:

  
Robin Brigode, Clerk of the Board of Supervisors

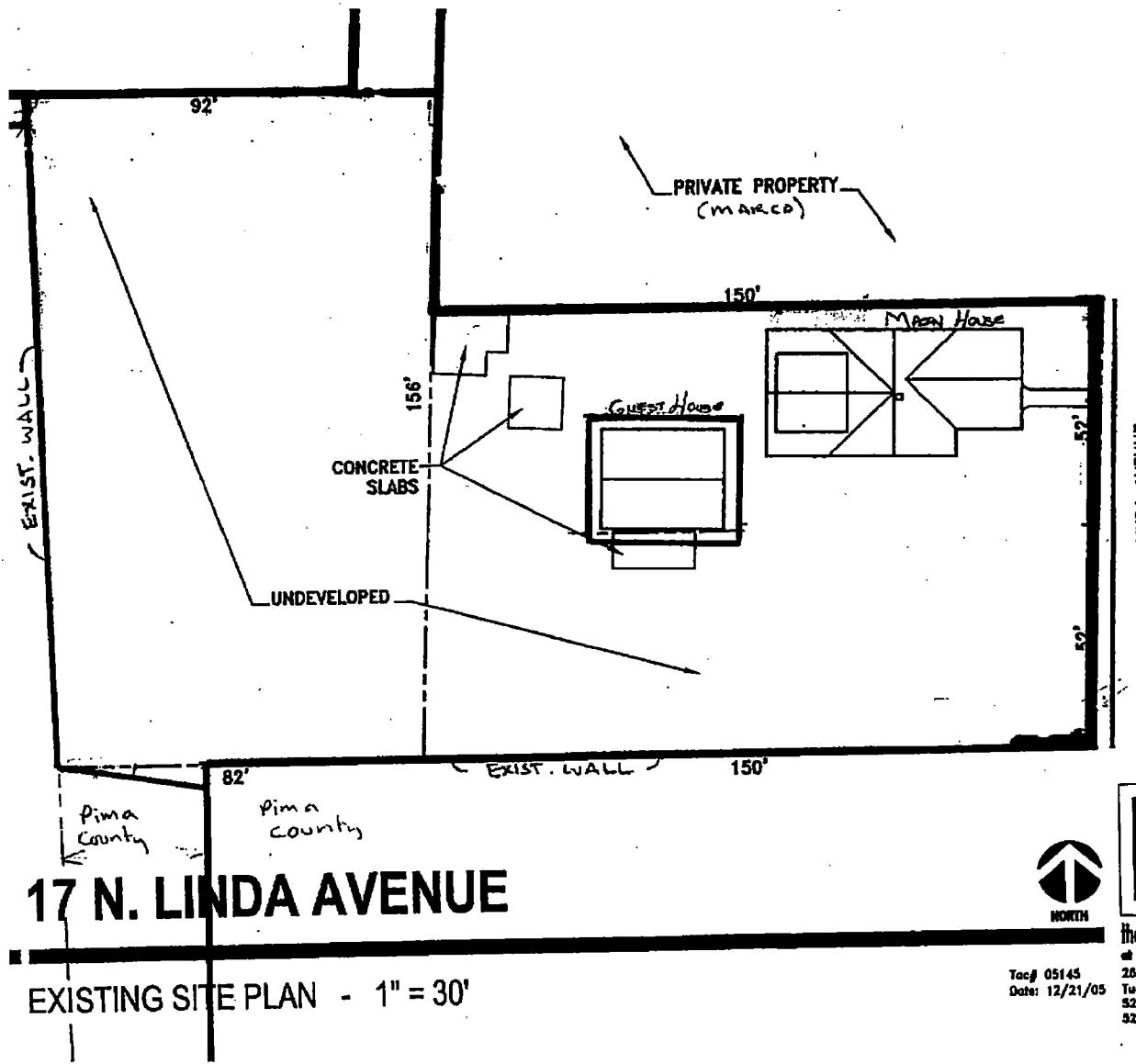
APPROVED AS TO FORM:

  
Tobin Rosen, Deputy County Attorney

APPROVED AS TO CONTENT:

  
Michael L. Kirk, Director Pima County Facilities Management

**EXHIBIT A**



## EXHIBIT B



PIMA COUNTY  
FACILITIES MANAGEMENT DIVISION  
150 WEST CONGRESS, 5<sup>th</sup> FLOOR  
TUCSON, ARIZONA 85701

### Volunteer Release Form

All members of Menlo Park Neighborhood Association, their guests, contractors or volunteers from other organizations, schools or municipalities are required to sign this Release Form prior to entering the "Property" which consists of the land, main house and rear storage building and any other improvements on the property, located at 17 N. Linda Avenue in Tucson, Arizona.

Name: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: (Home) \_\_\_\_\_ Work: \_\_\_\_\_ Cell: \_\_\_\_\_

E-mail: \_\_\_\_\_ Time(s)/Date(s) Available: \_\_\_\_\_

#### Emergency Contact Information

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Phone: \_\_\_\_\_

Do you have any health issues that we should be aware of? \_\_\_\_\_

Volunteer interest/skills \_\_\_\_\_

I wish to enter the property and/or volunteer for projects to benefit the "Property" listed above. I understand that by entering the property or the nature of volunteer activities that I may perform in my capacity as a volunteer may involve physical activity, contact with unidentified and/or unfamiliar persons, or other potential risk of bodily injury or damage to property. Knowing this and in consideration of being allowed to access the "Property" or volunteer, I HEREBY ASSUME FULL AND COMPLETE RESPONSIBILITY FOR ANY PERSONAL INJURY AND/OR PROPERTY DAMAGE THAT I SUSTAIN OR CAUSE WHILE ON THE "PROPERTY". IN ADDITION, I HEREBY RELEASE, HOLD HARMLESS AND COVENANT NOT TO FILE SUIT AGAINST PIMA COUNTY OR ANY OF THEIR EMPLOYEES, AGENTS, CONTRACTORS, VENDORS OR BOARD OF SUPERVISORS MEMBERS AND SUCCESSORS FROM ANY AND ALL LOSS, LIABILITY OR CLAIMS I MAY HAVE ARISING OUT OF MY ENTERING THE "PROPERTY" OR VOLUNTEER WORK TO BENEFIT THE "PROPERTY".

Printed name of volunteer: \_\_\_\_\_

Volunteer's Signature: \_\_\_\_\_

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