



Contract Number: CTN. PW. 14 X 033
Effective Date : 8.19.13
Term Date : 8.19.2038
Cost : \$250.-
Revenue :
Total : NTE:
Action
Renewal By : 5.1.2038
Term : 8.19.2038
Reviewed by: VR

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: 9.3.13

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

Lease Agreement between Pima County and Primavera Foundation, an Arizona non-profit corporation.

Primavera Foundation, an Arizona non-profit corporation, would like to lease Pima County property located at 400 E. 26th Street, Tax Parcel 118-18-0890. The Primavera Foundation is developing a new, multi-family affordable housing project in the City of South Tucson known as Las Abuelitas which is adjacent to the Pima County property. In lieu of rent, Primavera would like to utilize the County property for a neighborhood park and community garden, which will be maintained by Primavera. The lease term is for twenty-five (25) years and is renewable for one (1) additional 25 year period.

The Primavera Foundation is a non-profit organization, benefits include but are not limited to, affordable housing, workforce development, and neighborhood revitalization. Under the ARS 11-256.01 and ARS 11-251.491, a county may, with unanimous consent of the Board, lease to a non-profit corporation incorporated or operating in this state, without holding a public auction and for less than the fair rental value.

This request has been reviewed and approved by appropriate County staff

STAFF RECOMMENDATION(S):

It is recommended that the Board of Supervisors approve and authorize the Chairman to execute the Lease to the Primavera Foundation, an Arizona non-profit corporation.

To:
CoB. 8.21.13
Agenda 9.5.13

Procure Dept 08/14/13 10445

PIMA COUNTY COST: \$00.00 and/or REVENUE TO PIMA COUNTY: \$00.00 *\$250.00*
FUNDING SOURCE(S): Primavera Foundation *(\$10.00 per yr.)*
(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

☐ YES ☐ NO

Board of Supervisors District:

1 ☐ 2 ☒ 3 ☐ 4 ☐ 5 ☐ All ☐

IMPACT:

IF APPROVED:

The Primavera Foundation will have a duly executed lease to operate on County owned property. Pima County will benefit by having a neighborhood park constructed on the property which will be maintained by the tenant.

IF DENIED:

The Primavera Foundation will not have a lease to construct and operate a neighborhood park on County property. The property will remain vacant and subject to wildcat dumping. Pima County will remain responsible for cleaning any debris from the property.

DEPARTMENT NAME: Public Works Department Real Property Services

CONTACT PERSON: Rita Leon TELEPHONE NO.: 724-6462

PIMA COUNTY DEPT. OF: Community Development and Neighborhood Conservation PROJECT: Lease Agreement TENANT: Primavera Foundation, an Arizona non-profit Corporation AMOUNT: \$10.00 per year TERM: 25 years		
	CONTRACT	
	NO. <u>CTN-PW-140000000000000000000000</u> 33	
	AMENDMENT NO. _____ This number must appear on all invoices, correspondence and documents pertaining to this contract.	

LEASE AGREEMENT

This Agreement is made and entered into by and between PIMA COUNTY, a political subdivision of the State of Arizona ("LANDLORD") and Primavera Foundation, an Arizona non-profit corporation ("TENANT") pursuant to A.R.S. section 11-256.01.

1. **PARTIES:** Landlord is the owner of the real property located in the City of South Tucson, Pima County, Arizona; more particularly described in **Exhibit "A"** attached (the "Leased Property"). Tenant is developing a new, multi-family affordable housing project in the City of South Tucson known as Las Abuelitas. In conjunction with its development of Las Abuelitas, Tenant desires to provide a community garden and basketball play area to serve both Tenant's development and the surrounding neighborhood. Landlord has given notice of this Agreement as required by A.R.S. section 11-256.01(B).

2. **PURPOSE OF LEASE AND USE OF LEASED PROPERTY:** Landlord leases to Tenant the Leased Property on the terms contained herein. The Leased Property shall be used as a neighborhood use park area, and a community garden. Tenant may develop the Leased Property and operate it in accordance with the terms of this Agreement.

3. **TERM OF LEASE:** The term of this Agreement is twenty-five (25) years commencing on the date approved by the Pima County Board of Supervisors, unless terminated pursuant to this Agreement or State Law. This Agreement will be reviewed ninety (90) days before the end of the Twenty-fifth year following approval by the Pima County Board of Supervisors, at which time the parties will agree whether to continue the Agreement for one (1) additional twenty-five (25) year period.

4. **CONSIDERATION:** Tenant will pay Landlord Ten Dollars (10.00) a year rent due upon execution of Lease, and on each anniversary date of the execution of lease. Tenant will construct a park area and community garden improvements. Tenant will plant trees and vegetation and provide for watering, pruning and a reasonable level of maintenance

which will promote the growth and well-being of said trees and vegetation. Tenant will report all incidents of trespass, vandalism and hazards on the Leased Property to Landlord's Real Property Services Section. If there is no danger to the Tenant, Tenant will take necessary temporary action to insure safety and security; including but not limited to sweeping up and disposing of glass, and blocking, repairing or providing visible markers or barricading hazards to safety such as holes or erosion.

5. LIABILITY AND PROPERTY INSURANCE:

- a. Tenant will procure and maintain during the life of this Agreement, general liability insurance, including automobile, personal injury, and contractual liability, all of which shall provide limits of not less than One Million Dollars (\$1,000,000) for injuries or damages received or sustained by any person, persons or property, as a result of any one occurrence or incident by Tenant or its employees, agents, contractors, subcontractors or invitees on the Leased Property. Landlord will be named as an additional insured under any policy written which is intended to comply with the above requirement. Each policy will be endorsed by the insurance carrier specifying that no cancellation, non-renewal, or major change in the coverage or limits will be effective until after the expiration of a thirty (30) day period following written notice to Landlord. A certified copy of each policy intended to comply with the above requirement will be delivered to Landlord at the Office of the Pima County Risk Manager for review and acceptance.
- b. Tenant will obtain and keep in force during the term of this Agreement a policy of insurance covering loss or damage to the Leased Property in the amount of the full replacement value thereof, providing protection against all vandalism, malicious mischief, special extended perils (all risk) and will deliver to Landlord a Certificate of Liability Insurance, with Landlord named as additional insured. Said Certificate must be satisfactory to Landlord. Tenant will provide a certified copy of Tenant's policy of liability insurance to Landlord at the Office of the Pima County Risk Manager for review and acceptance.

6. REPAIRS, MAINTENANCE AND UTILITIES:

- a. Tenant will obtain utility services at the Leased Property in Tenant's name and is solely responsible for payment of all utilities used or consumed by Tenant on the Leased Property pursuant to this Agreement.
- b. Tenant is responsible, at Tenant's sole expense, for general maintenance of the Leased Property which includes any improvements installed by Tenant. Tenant agrees to maintain the grounds and facilities of the Leased Property in a safe and sanitary condition, to water vegetation, trim and remove overgrowth and weeds, dispose of trash and rubbish legally, and maintain the community park and gardens in a reasonably neat and clean manner.

- c. Tenant agrees to promote, operate and maintain the Premises as a park area with a community garden for education, relaxation and recreation of the surrounding neighborhood.

7. RIGHT OF ENTRY: Landlord has the right to enter the Leased Property for routine inspections. Landlord will make reasonable attempts to notify Tenant prior to a routine inspection.

8. CAPITAL IMPROVEMENTS: Tenant will submit all plans for construction, alterations, repairs, and other work conducted on the Leased Property to Landlord for written approval prior to undertaking any such work. Approval by Landlord of said plans does not relieve Tenant of the responsibility of complying with all applicable codes and construction requirements, or of obtaining necessary permits or approvals from the authorities of proper jurisdiction. Landlord approval is not required for the installation or maintenance of trees, plants or shrubs. Landlord's review and approval of plans pursuant to this Section 8 is solely to determine compliance of the plans with the terms of this Agreement and is not a guarantee of adequacy of the plans or of compliance of the plans with any applicable law or ordinance.

9. NO ENCUMBRANCE: Tenant will keep the Leased Property free and clear of all liens, claims and encumbrances of any type. In the event of any such lien, claim or encumbrance, Tenant shall promptly discharge the same. Tenant indemnifies, defends and holds Landlord harmless from and against any such lien, claim or encumbrance.

10. INDEMNIFICATION:

- a. To the fullest extent permitted by law, Tenant indemnifies, defends and holds harmless Landlord, its officers, employees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines, damages, consequential damages, liability, interest, attorney's and accountant's fees, costs and expenses of whatsoever kind and nature, whether arising before or after acceptance of the services pursuant to this Agreement, and in any manner directly or indirectly caused, occasioned or contributed to, in whole or in part, by reason of any act, omission, fault or negligence, violation or alleged violation of any law, whether active or passive of the Tenant, its agents, employees, or anyone acting under its direction, control, or on its behalf, and Tenant's guests and invitees in connection with or incident to the performance of this Agreement. Without limiting the generality of the foregoing, Tenant's indemnity of Landlord includes injury or death of any person or persons and damage to any property, regardless of where located, including without limitation the property of Landlord.

- b. Tenant will at its sole expense comply with all applicable Federal, State, County and City laws, statutes, ordinances, rules and, regulations regarding the construction, use or occupancy of the Leased Property.

- c. Landlord, its officers, employees and agents are not liable for any damage to or loss of property of Tenant, its guests or invitees, by reason of vandalism, theft or otherwise.
 - d. To the fullest extent permitted by law, Tenant indemnifies, defends and holds harmless, Landlord, its officers, employees, and agents from and against any and all loss, damage, and expense (including, but not limited to, reasonable investigation and legal fees and expenses), including, but not limited to, any claim or action for injury, liability, or damage to persons or property, and all claims or actions brought by any person, firm, governmental body, or other entity, alleging or resulting from or arising from or in connection with contamination of or adverse effects on the environment, or violation of any Environmental Laws or other statute, ordinance, rule, regulation, judgment, or order of any government or judicial entity, and from and against any damages, liabilities, costs, and penalties assessed as a result of any activity or operation on the Leased Property during the term of this Agreement. Tenant's obligations and liabilities under this paragraph continue so long as Landlord bears any liability or responsibility under the Environmental Laws for any action that occurred on the Leased Property during the term of this Agreement.
 - e. All indemnification provided herein survives the termination of this Agreement.
11. UNLAWFUL ACTIVITIES: Tenant will not at any time use or allow the use of the Leased Property for any unlawful, or offensive purpose, or in any manner that is contrary to any law of the United States, the State of Arizona, any ordinance of the City of South Tucson or any ordinance of Pima County.
12. RESOURCE PROTECTION: In the best interest of resource and improvement protection, Tenant agrees to:
- a. Discharge no waste or byproducts or materials onto the Leased Property or into water channels that might possibly result in harm to wildlife or to human water supplies.
 - b. Take all reasonable measures to protect the scenic aesthetic values of the area and to prevent soil erosion or gullyng that might be caused by construction or improper utilization of resources. Tenant is responsible for security of the Leased Property and will take all reasonable steps and precautions to discourage vandalism or disorderly conduct, including the calling in of appropriate law enforcement officers when necessary and assisting in subsequent prosecution of violations. Landlord acknowledges that the Leased Property is vacant land intended primarily for recreational and gardening use and that Tenant's presence

on the Leased Property will be at infrequent and inconsistent intervals, and there will be no caretaker or other individual regularly located on the Leased Property.

- c. Take appropriate action to prevent fire damage to improvements and natural resources by complying with approved building and electrical wiring codes, butane installations, chimneys, spark arresters, fire extinguishers, and area closures and use restrictions imposed by Federal, State, City or County laws, ordinances or regulations.
- d. Comply, at Tenant's sole expense, with all present and hereinafter enacted laws and regulations regulating the environment, hazardous or toxic substances or wastes, ambient air, ground water, surface water and land use, including sub-strata land.

13. ASSIGNMENT AND SUBLETTING:

- a. Tenant will be using the Leased Property in connection with educational activities. Therefore, Tenant's use will include use by teachers, employees and consultants of Tenant, as well as students and related family members. Tenant also anticipates permitting use of portions of the Leased Property by schools or educational entities, and by members of the surrounding community. Landlord acknowledges and agrees that all such uses of the Leased Property shall be permissible so long as there is compliance with use provisions and other terms contained in this Lease Agreement. Other than as described at this Section 13(a), Tenant may not assign this Agreement or sublet any portion of the Leased Property without the prior written consent of Landlord.
- b. Tenant will set aside in a special fund all fees and other proceeds generated from use of the Leased Property, including, without limitation, use fees paid by third parties and revenue generated from the sale of products grown on the Leased Property. Lessee will use these funds for the maintenance and improvement of, and activities conducted on, the Leased Property.

14. VIOLATION OF TERMS:

- a. In the event of any violation of any term, condition or covenant of this Lease Agreement, Landlord will provide Tenant with a written notice of such violation. This Agreement will terminate in the event that Tenant fails to cure the violation within ten (10) days of receipt of written notice of violation from Landlord, unless such default cannot reasonably be cured within ten (10) days. In that event, Tenant will have such additional time to cure as is reasonably required so long as Tenant diligently pursues the cure or as otherwise agreed to by both parties. Upon termination, Landlord has the right to enter upon and take full possession of the Leased Property.

- b. In the event Landlord permits any act or omission by the Tenant which might alter, change or modify any of the covenants or provisions of this Agreement, such permission, whether expressed or implied, is not a waiver of any of the covenants or provisions of this Agreement, except for that instance alone, and does not authorize Tenant to make any further violation thereof unless such covenant or provision is expressly waived in writing and signed by a duly authorized representative of Landlord.
15. TERMINATION: Landlord may terminate this Agreement for cause if Tenant does not cure a violation within the applicable time described at Section 14(a), or for any other reason with one hundred twenty (120) day's written notice to Tenant. Tenant may terminate this lease for any reason with thirty (30) day's written notice to Landlord. Upon the termination or expiration of this Agreement, or any extension thereof, Tenant will leave the Leased Property in a good and clean condition. Tenant will remove any Tenant-built or installed improvements at Tenant's sole expense prior to vacating the Leased Property if requested by Landlord and will repair any damage caused by removal of Tenant's personal property. Any of Tenant's personal property not removed at the termination of this Agreement shall become the property of Landlord.
16. RESERVATION OF LANDLORD RIGHTS: Landlord reserves the right to construct and maintain sewers and other utilities through the Leased Property and may grant utility easements to third parties through the Leased Property so long as such easements do not unreasonably interfere with Tenant's use of the Leased Property.
17. ENTIRE AGREEMENT: AMENDMENTS TO LEASE AGREEMENT: This Lease Agreement sets forth all the promises, agreements, conditions, inducements and understandings between Landlord and Tenant relative to the Leased Property. There are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written other than as herein set forth. This Agreement may not be modified except by an instrument in writing executed by both parties.
18. BINDING EFFECT: This Agreement is binding upon and inures to the benefit of the parties, their successors and assigns.
19. CHOICE OF LAW: This Agreement is governed by the laws of the State of Arizona. Any action brought pursuant to this Agreement must be brought in a court in Pima County, Arizona.
20. NOTICES: Whenever notice, request or demand ("notices") is required or permitted to be given, it may be given, in writing, by personal delivery to the other party or deposited with the United States Postal Service and mailed by regular mail, addressed to the parties as follows:

To Landlord: Clerk of the Board of Supervisors
Pima County
130 West Congress, 5th Floor
Tucson, AZ 85701

With a copy to: Real Property Services
Pima County
201 North Stone, 6th Floor
Tucson, AZ 85701

To Tenant: Primavera Foundation,
151 W. 40th Street
Tucson, AZ 85713

Either party hereto may change the address for notices at any time and from time to time by giving written notice to the other party of the new address for notices.

21. CONFLICT OF INTEREST: This Agreement is subject to A.R.S. § 38-511, the provisions of which are incorporated herein by this reference, which provides for cancellation of contracts by Pima County for certain conflicts of interests.

In Witness Whereof, the parties hereto have executed this Agreement as of the date identified below.

LANDLORD: Pima County, a political
subdivision of the State of Arizona

TENANT: Primavera Foundation, an
Arizona Non-Profit Corporation

By: _____
Ramon Valadez

By: Peggy Hutchinson

Title: Chairman, Pima County Board of Supervisors

Title: CEO

Date: _____

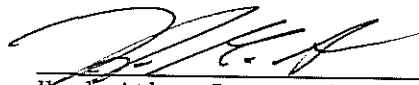
Date: 7/3/13

Attest:

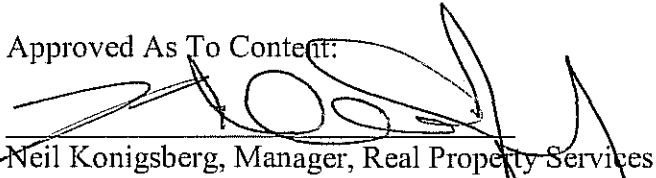
Robin Brigode, Clerk, Pima County Board of Supervisors

Approved as to Form:


Tobin Rosen, Deputy County Attorney


Hank Atha, Deputy County Administrator
Community & Economic

Approved As To Content:


Neil Konigsberg, Manager, Real Property Services

STATE OF ARIZONA)

) ss

COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by
Ramon Valadez as Chairman of the Pima County Board of Supervisors for Pima County,
political subdivision of the State of Arizona.

Notary Public

My Commission Expires:

STATE OF ARIZONA)

) ss

COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by

as _____ of Primavera, an Arizona Non-
Profit Corporation

Notary Public

My Commission Expires: _____

Exhibit "A"

**Lot 5 Block 9 of Chattmans Addition a subdivision of Pima County, Arizona,
according to the map of plat thereof of the recorder in the office of the County
Recorder in Pima County, Arizona, in Book 2 of Maps and Plats at page 22 thereof.**