



Contract Number: CTN-FM-CMS110233-04
Effective Date : 08-06-2013
Term Date : 06-30-2038
Cost : 0
Revenue : \$172,362.45
Total : 0 NTE:
Action
Renewal By : 01-01-2038
Term : 06-30-2038
Reviewed by: US

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: August 6, 2013

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

ADOT/MVD is Tenant under a long-term ground lease from Pima County for 7330 N. Shannon Road (the Nanini Government Center), on which ADOT built a MVD facility and parking lot. The ground lease, which supersedes Intergovernmental Agreement No. 82-47 dated April 5, 1982, has an original term from July 1, 1988 through June 30, 2013, a unilateral option in favor of ADOT to renew for (1) one additional term of 25 years, and a provision for the annual rental amount to be adjusted every five (5) years based CPI. ADOT/MVD has exercised its option to renew; it has no other renewal options remaining.

In addition to extending the lease term an additional twenty-five (25) years, from July 1, 2013 through June 30, 2038, this Fourth Amendment applies the CPI adjustment to increase the rental amount from \$30,615.00 to \$34,472.49 per year for the period of July 1, 2013 through June 30, 2018. Total rent revenue for that five (5) year period will be \$172,362.45. Adjustments for future five (5) year periods will be determined and applied when the respective CPI rates are known.

CONTRACT NUMBER (If applicable): CMS 110233 (ADOT LEASE NO.: A-205)

STAFF RECOMMENDATION(S): Accepts ADOT's exercise of its contractual right to renew for 25 additional years its long-term ground lease for the MVD facility at 7330 N. Shannon Road, Tucson, AZ.

Procure Dept 07/16/13 PM02:19

CORPORATE HEADQUARTERS: _____

CLERK OF BOARD USE ONLY: BOS MTG. _____

ITEM NO. _____

PIMA COUNTY COST: \$0.00 and/or REVENUE TO PIMA COUNTY: \$172,362.45 for first 5 years.

FUNDING SOURCE(S): Tenant ADOT
(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

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

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

IF APPROVED: Pima County will continue to receive annual rent payments from ADOT and will not be in breach of contract as a result of denying ADOT's exercise of its renewal option.

IF DENIED: Refusal by Pima County to honor ADOT's exercise of its unilateral contractual right would likely result in litigation for specific performance and/or substantial economic damages.

DEPARTMENT NAME: Facilities Management

CONTACT PERSON: Nina Armstrong TELEPHONE NO.: 724-2725

PIMA COUNTY DEPARTMENT OF: FACILITIES MANAGEMENT	<table border="1"> <tr> <td align="center" colspan="2">CONTRACT</td> </tr> <tr> <td>NO.</td> <td><u>CTN-FM-CMS110233</u></td> </tr> <tr> <td>AMENDMENT NO.</td> <td><u>04</u></td> </tr> <tr> <td colspan="2">This number must appear on all invoices, correspondence and documents pertaining to this contract.</td> </tr> </table>	CONTRACT		NO.	<u>CTN-FM-CMS110233</u>	AMENDMENT NO.	<u>04</u>	This number must appear on all invoices, correspondence and documents pertaining to this contract.	
CONTRACT									
NO.		<u>CTN-FM-CMS110233</u>							
AMENDMENT NO.		<u>04</u>							
This number must appear on all invoices, correspondence and documents pertaining to this contract.									
REVENUE CONTRACT									
LANDLORD: PIMA COUNTY									
TENANT: ARIZONA DEPARTMENT OF TRANSPORTATION									
PIMA COUNTY CONTRACT NO.: CMS 110233 ADOT LEASE NO.: A-205									
LEASE AMENDMENT NO.: FOUR (4)									

ORIGINAL LEASE TERM:	07/01/1988 – 06/30/2013	ORIG. LEASE AMOUNT:	\$ 86,750.00
TERMINATION DATE PRIOR AMENDMENT:	06/30/2013	PRIOR AMENDMENTS:	\$ 481,703.80
TERMINATION THIS AMENDMENT:	06/30/2038	1ST 5 YEARS OF THIS AMENDMENT:	\$ 172,362.45
		1ST 5 YEARS REVISED LEASE AMOUNT:	\$ 740,816.25

FOURTH AMENDMENT TO GROUND LEASE 7330 N. SHANNON ROAD, TUCSON, AZ

This FOURTH AMENDMENT, for reference dated June 7, 2013, is made and entered into by and between THE ARIZONA DEPARTMENT OF TRANSPORTATION as Tenant and PIMA COUNTY as Landlord.

1. **DEFINED TERMS.** For purposes of this Amendment, the following terms have the meanings set forth below:

1.1. Landlord: Pima County, a political subdivision of the State of Arizona.

1.2. Tenant: The Arizona Department of Transportation, an Agency of the State of Arizona.

1.3. Leased Property: Approximately 77,088 square feet of land located at 7330 N. Shannon Road, Tucson, Arizona, upon which the Nanini Motor Vehicle Department facility is constructed.

1.4. Lease: That certain twenty-five (25) year ground lease for the Leased Property naming Tenant as Tenant, dated June 21, 1988, which was previously amended by that certain First Amendment dated January 19, 1993 and that Second Amendment dated July 1, 1993 and that Third Amendment dated February 20, 2007, (the "Lease").

1.5. Extended Lease Term: July 1, 2013 through June 30, 2038.

1.6. Effective Date: This Amendment shall be effective as of the date signed by the parties.

2. **MODIFICATION OF LEASE.** Landlord and Tenant hereby agree to modify the terms of the Lease as follows:

2.1. Exercise of Option: As permitted by Lease Paragraph 2, Tenant hereby elects to exercise its option to renew the Lease for twenty-five (25) additional years, from July 1, 2013 through June 30, 2038 (the "Extended Lease Term"), and Landlord agrees to such exercise and renewal. No further options remain.

2.2. Annual Base Rent and Late Fees: Tenant will pay to Landlord Base Rent and applicable taxes on an annual basis (the "Annual Base Rent"). The Annual Base Rent is due and payable on July 1st of each year and is delinquent if not paid in full by September 30th. Any Annual Base Rent not received by Landlord before September 30th of the year in which it is due will be, at Landlord's sole discretion, assessed a ten percent (10%) late fee to be paid within twenty (20) days after invoice.

2.2.A. Base Rent Amount for the Initial Five (5) Years: Effective July 1, 2013, Base Rent will increase from \$30,615.00 per year to \$34,472.49 per year, and will remain at that annual amount until July 1, 2018. Calculations establishing the Base Rent increase are set forth on Exhibit A, attached hereto and incorporated herein by reference. Tenant agrees to pay the July 1, 2013 through June 30, 2014 installment of Annual Base Rent in the amount of \$34,644.85 (\$34,472.49 Base Rent plus \$172.36 for applicable taxes) no later than September 30, 2013. The total Base Rent for the first five (5) year period of the Extended Lease Term is \$172,362.45 plus applicable taxes.

2.2.B. Base Rent Adjustments Every Subsequent Five (5) Year Period: As provided in Lease Paragraph 7, Base Rent will adjust every five (5) years based on the most recent April 30th CPI rate reported in the "*Consumer Price Index, All Urban Consumers (CPI-U), U.S. City Average, All Items*" tables published by the U.S. Department of Labor, Bureau of Labor Statistics.

2.3. Early Termination Rights: Tenant may terminate this Agreement by giving Landlord no less than ninety (90) days written notice of its intent to terminate. Landlord may terminate this Agreement by giving Tenant no less than one (1) year's written notice of its intent to terminate.

2.4. Cancellation Rights: Paragraph 11 of the original Lease, "Governor's Cancellation Authority," is amended to correct a typographical error in the named statute, which should have been A.R.S. §38-511 instead of §33-511, and to include Landlord's right of cancellation for conflict of interest provisions pursuant to A.R.S. §38-511.

2.5. Indemnification: Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees)

(hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

2.6. Applicable Law: The parties shall comply with all federal, state and local laws, rules, regulations, standards, Executive Orders, and Pima County Board of Supervisors' policies, including Policy Number C. 3.18 entitled "Tobacco-Free Environment" attached hereto as Exhibit B and incorporated herein by reference, without limitation to those designated within this Lease. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Lease and any disputes hereunder. Any action relating to this Lease shall be brought in a court of the State of Arizona in Pima County. Any changes in the governing laws, rules, regulations, and Board of Supervisor policies during the terms of this Lease shall apply but do not require an amendment.

3. Notices: Any notice required or permitted to be given under this Lease shall be in writing and shall be served by personal delivery, United States mail service, electronic transmission, or by fax, upon the other party. Notices shall be addressed and mailed as follows:

If to Landlord: Pima County, Facilities Management Department
150 West Congress Street, 3rd Floor
Tucson, AZ 85701-1317
Phone: 520.724-3085
Fax: 520.724-3900

If to Tenant: Arizona Department of Transportation
Administrative Services Division
1801 W. Jefferson, MD 509M
Phoenix, Arizona 85007

4. **REMAINING LEASE TERMS UNCHANGED.** Except as modified in this Fourth Amendment, all of the terms and conditions of the Lease shall remain in full force and effect.

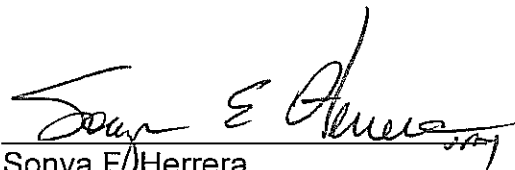
THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the day, month and year written below.

LANDLORD: PIMA COUNTY
a political subdivision of the State of Arizona

**TENANT: THE ARIZONA DEPARTMENT
OF TRANSPORTATION,**
an Agency of the State of Arizona

Ramón Valadez,
Chairman, Board of Supervisors



Sonya E. Herrera,
Administrative Services Director

Date _____


Date 7/3/13

ATTEST:

Robin Brigode, Clerk of Board

Date _____

APPROVED AS TO CONTENT:



Reid H. Spaulding, Director, Facilities Management

Date 7.15.13

APPROVED AS TO FORM:



Hal Gilbreath, Deputy County Attorney

Date 6.28.13

EXHIBIT A

2013 Base Rent CPI Adjustment Calculation for period of 7/1/2013 through 6/30/2018

ADOT MVD Facility, 7330 N. SHANNON RD, TUCSON (25 year Ground Lease)

Pima County Contract # CTN-FM-CMS 110233

Department of Transportation, State of Arizona, Lease # A-205

CPI BASED RENT INCREASE FOR 7/1/2013 through 6/30/2018:

<u>Description</u>	<u>Value</u>
CPI-U All Items Index, U.S. City Avg., as of 4/30/2007 ^(1, 2)	206.686
CPI-U All Items Index, U.S. City Avg. as of 4/30/2013 ^(1, 3)	<u>232.773</u>
Point change: 4/30/07 thru 4/30/13	26.087
Percent change from 4/30/07 - 4/30/13	0.126%
 Annual Base Rent from 7/1/2007 through 6/30/2013	 \$30,615.00
CPI Increase Multiplier	<u>X 12.60</u>
	\$34,472.49
 NEW ANNUAL BASE RENT	 \$34,472.49
 TOTAL 5 YEAR BASE RENT	 \$172,362.45
(7/1/2013 through 6/30/2018)	

(1) From BLS CPI HISTORY TABLE at <http://stats.bls.gov/cpi/#tables>

(2) CPI-U Report Date used for last rent adjustment (in 2007)

(3) Most recent CPI Report as of 5/10/13.

EXHIBIT B

PIMA COUNTY, ARIZONA

BOARD OF SUPERVISORS POLICY

Subject: Tobacco-Free Environment

Policy Number: C 3.18

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Purpose:

Smoking and the use of tobacco related products are a major cause of preventable disease and death. As a leading employer and health proponent Pima County is committed to the promotion of health, wellness, and the prevention / treatment of diseases. Pima County also serves as a model for the public influencing attitudes about smoking and the dangers of tobacco products. The purpose of this tobacco-free policy is to create tobacco-free environments for all Pima County facilities, public buildings and adjacent properties, to provide Pima County employees and the public with guidelines for managing and supporting this policy, and to encourage a healthy lifestyle for all personnel and visitors.

Background:

As a major entity involved in the promotion of public health and safety within Pima County, the Board of Supervisors promotes and encourages the establishment of a tobacco-free zone on County facilities, public buildings and adjacent properties. The Board of Supervisors has previously established wellness as a priority for all County employees, by the adoption of the long-range Sustainability Program and employee incentives in the way of premium discounts for health insurance benefits. The establishment of a tobacco-free policy is the natural continuance of those efforts.

Policy:

It is the policy of the Board of Supervisors that to provide a safe and healthy environment for all employees, and the general public.

The Board of Supervisors prohibits the use of tobacco products at all times on County facilities, public buildings and adjacent properties, and in County vehicles. This prohibition applies to all employees, and to all visitors and other persons at any County sponsored activity or event conducted on County facilities, in public buildings or on adjacent properties.

Definitions:

Tobacco Products include cigarettes, cigars, pipes, smokeless tobacco, water pipes, hookah, e-cigarettes, chewing tobacco, snuff and other products containing tobacco.

County Facilities, Public Buildings and Adjacent Properties including County owned or leased properties and a facility occupied or used by any County personnel, visitor, or vendor, and includes but is not

EXHIBIT B

PIMA COUNTY, ARIZONA
BOARD OF SUPERVISORS POLICY
Subject: Tobacco-Free Environment
Policy Number: C 3.18
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limited to buildings, courtyards, walkways, breeze-ways, parking lots, parking structures, County vehicles (owned or leased), loading docks or construction sites.

Compliance:

County personnel are responsible for compliance with the policy.

Visitors and vendors observed to violate this policy shall be respectfully informed of the Tobacco-Free Environment Policy and asked to comply. If a visitor or vendor neglects to comply, that neglect to comply may be used as grounds for prohibiting access to premises or facilities by said visitor or vendor.

If any individual violating the policy appears agitated or otherwise confrontational regarding compliance, then County personnel shall immediately inform the staff responsible for the facility or security personnel if available and shall engage in no further intervention.

All vendors doing business with Pima County shall be notified of the Tobacco-Free policy and shall be expected to comply with the policy. Organizers and supervisors of public events, conferences, meetings and work activities on County facilities, work sites, public buildings and adjacent properties shall be responsible to communicating the requirements of the Tobacco-Free Policy to such events or conferences for attendees.

All new employees of Pima County will be informed on and educated about the Tobacco-Free Policy and the requirement that employees comply with the policy. Additionally, new employees shall be made aware of the availability of tobacco cessation programs sponsored or funded by Pima County.

References:

Pima County Ordinance, Chapter 2.12
Pima County Code, Section 8.50
Adopted Date: November 13, 2012
Effective Date: January 1, 2013

Website: <http://www.pima.gov/cob/POLICY/C3-18.pdf>