

BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

Requested Board Meeting Date: May 12, 2015

or Procurement Director Award ☐

Contractor/Vendor Name (DBA): Mountain View Tours, Inc., an Arizona corporation

Project Title/Description:

Ground Lease Agreement

Purpose:

Ground Lease Agreement ("Agreement") between Mountain View Tours, Inc., an Arizona Corporation, and Pima County, a political subdivision of the State of Arizona.

Mt. View Tours is authorized to operate a charter bus company in the State of Arizona and is located at 4995 N. Casa Grande Hwy. Mt. View Tours will be leasing approximately 42,357 square feet of Pima County property located at 3180 W. Diamond St., for the purpose of parking their buses it uses in the operation of its business.

The lease amount was set and legal notice published in accordance with the Arizona Revised Statutes Section 11-256.

Procurement Method:

A ground lease of vacant county property pursuant to A.R.S. 11-256.

Program Goals/Predicted Outcomes:

Lease of county property with rental income of \$18,000.00 per year. Lease is one year because property continues to be used by PDEQ for monitoring of wells.

Public Benefit:

Collection of rental income on vacant county property. Mt. View Tours previously leased the adjacent property from the County. The property previously leased to Mt. View Tours is currently being conveyed as part of an exchange to settle a pending condemnation proceeding.

Metrics Available to Measure Performance:

N/A

Retroactive:

N/A

COB: 4-29-15
BOS: 6-12-15

18pgs(.)
vend.1
ver.1

Procure Dept 04/22/15 PM02:07

Original Information

Document Type: CTN Department Code: PW Contract Number (i.e., 15-123): 15*0146
Effective Date: 5/12/2015 Termination Date: 5/12/2016 Prior Contract Number (Synergen/CMS): _____
☐ Expense Amount: \$ _____ ☒ Revenue Amount: \$ \$18,000.00
Funding Source(s): General Fund 6004

Cost to Pima County General Fund: N/A

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: Rita Leon

Department: Real Property Services

Telephone: 724-6462

Department Director Signature/Date: [Signature]

4-20-2015

Deputy County Administrator Signature/Date: [Signature]

4/21/15

County Administrator Signature/Date:
(Required for Board Agenda/Addendum Items)

[Signature] 4/21/15



2.4. Landlord has the authority to lease the Land to Tenant. Landlord has provided notice, appraised the Land and held an auction in accordance with A.R.S. §11-256. Tenant was the highest responsible bidder at the auction.

2.5. Landlord desires to lease the Land to Tenant, and Tenant desires to lease the Land from Landlord, together with all improvements now on or hereafter located on the Land (the "**Premises**"), under the terms and conditions set forth in this Lease.

3. **PREMISES.**

3.1. **Lease.** In consideration of Tenant's compliance with all the terms and conditions of this Lease, and timely performance of all its obligations under this Lease, Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord. Tenant will use the Premises solely for parking buses it uses in the operation of its business.

3.2. **Condition of Land.** Tenant acknowledges that it is fully familiar with the physical and legal condition of the Land and has received the same in good order and condition. LANDLORD MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE CONDITION OR STATE OF THE LAND OR ITS FITNESS OR AVAILABILITY FOR ANY PARTICULAR USE, AND LANDLORD IS NOT LIABLE FOR ANY LATENT OR PATENT DEFECT THEREIN. Tenant's use of the Premises is subject to all existing easements, rights-of-way and set-backs existing as of the date of this Lease.

3.3. **Quiet Enjoyment.** Landlord covenants and agrees that upon Tenant paying the Rent and performing and observing all of the Tenant's obligations under this Lease, Tenant may peaceably and quietly have, hold and enjoy the Premises for the Term, without hindrance or molestation by anyone claiming paramount title or claims through Landlord.

3.4. **Entry by Landlord.** Landlord reserves the right to enter the Premises to inspect the same; provided that if such entry is not during normal business hours, Landlord will give Tenant at least twenty-four (24) hours advance notice. Landlord will make a reasonable effort to not interrupt Tenant's business at the Premises. Landlord at any and all times will have the right to use any and all means which Landlord may deem proper to open gates or doors in an emergency in order to obtain entry to the Premises, without liability to Tenant, except for any failure to exercise due care for Tenant's property, and any entry to the Premises obtained by Landlord by any such means, or otherwise, will not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof.

4. **ACCESS TO PREMISES.** Landlord and Tenant acknowledge that, until such time as access to the Diamond Street Property from the Interstate-10 frontage road is constructed, vehicles must access the Premises from Diamond Street by crossing the Diamond Street Property. Landlord and Tenant further acknowledge that a future access drive from the Interstate-10 frontage road to the Diamond Street Property, in approximately the location depicted in **Exhibit "B"** ("Future Access") has been proposed as part of a tentative settlement between Landlord and DFA, L.L.C., in Pima County Superior Court cause no. C20112935. Until such time as the Future Access is constructed, Landlord grants Tenant a revocable license across only that portion of the Diamond Street Property depicted as the "25 foot preferred access route" in **Exhibit "A"** ("Current Access") for the sole purpose of allowing Tenant to access the Premises. Tenant shall use the Current Access until notified by Landlord that the Future Access has been constructed. Upon Landlord's written notice to Tenant that the Future Access has been constructed, Tenant's license to use the Current Access shall automatically terminate and Tenant shall thereafter access the Premises using only the Future Access. Landlord agrees to grant Tenant a revocable license to cross the Diamond Street Property only to the extent necessary to allow Tenant to access the Premises from the Future Access.

5. **TERM.**

5.1. **Term.** This Lease will commence on the Effective Date and continue for a period of one (1) year (the "**Term**"), unless terminated earlier in accordance with the terms of this Lease.

5.2. **Holdover.** Any holding over with the consent of Landlord after the expiration of the Term or earlier termination of the Lease will be construed to be a tenancy from month-to-month upon the same terms and conditions as provided in this lease, to the extent applicable, provided that Rent shall be increased annually, commencing one year after the Effective Date, by the lesser of (i) Three and One-Half Percent (3.5%) annually (not compounded), or (ii) by the increase, if any, in the Consumer Price Index—U.S. City Average—All Urban Consumers ("**Index**") as published by the U.S. Department of Labor, Bureau of Labor Statistics ("**Bureau**") for the five year period ending prior to the rent adjustment date. Should the Bureau discontinue the publication of the Index, or publish it less frequently, or alter it in any other manner, then Tenant shall adopt a substitute index or substitute procedure that reasonably reflects and monitors consumer prices, that is reasonably acceptable to Landlord.

5.3. **Termination.** Landlord may terminate the lease without cause with thirty (30) days written notice. Tenant may terminate this lease for any reason with thirty (30) days written notice to Landlord. Upon the termination or expiration of this Lease, or any extension thereof, Tenant shall leave the Premises in a good and clean condition. Tenant shall remove any Tenant-built or installed

improvements prior to vacating the Premises if requested by Landlord or unless requested to be left in place by Landlord.

6. **RENT.**

- 6.1. **Annual Rent.** Tenant will pay monthly rent ("**Rent**") in the amount of One Thousand Five Hundred Dollars (\$1,500.00).
- 6.2. **Payment of Rent.** Rent shall be due and payable in monthly installments, in advance, on or before the first day of each month during the Term, without demand. The first and last rent payments shall be prorated for a partial month if necessary.
- 6.3. **Late Fee.** If rent is not paid by the due date, a One Hundred Twenty-Five Dollar (\$125.00) late charge shall be immediately due and payable.
- 6.4. **Rental Taxes.** Tenant must pay to Landlord any occupancy tax, rent tax or government property lease excise tax now in effect or hereafter enacted, which Landlord is now or hereafter required to collect from Tenant or to pay with respect to the Premises or this Lease.
- 6.5. **Other Taxes.** Tenant is responsible for payment of all taxes, whether real property taxes, personal property taxes, income taxes, or any other taxes, if any, that are or may be assessed relating to Tenant's use of the Premises pursuant to this Lease.

7. **ALTERATIONS.** All changes, alterations, additions, substitutions or improvements to the Premises (collectively, "**Alterations**"), shall be at Tenant's sole cost and expense, and shall comply with the following requirements:

- 7.1. **Minor Alterations.** Tenant may make such non-structural Alterations as Tenant may reasonably consider necessary and desirable to adapt or equip the Premises for Tenant's use and occupancy, provided Tenant has received the prior written consent of the Manager of Pima County Real Property Services, and the cost of such Alterations do not exceed Fifteen Thousand Dollars (\$15,000.00).
- 7.2. **Substantial Alterations.** Tenant will make no Alterations that will (i) cost in excess of \$15,000.00; or (ii) involve structural work or changes (collectively, "**Substantial Alterations**"), unless Tenant first delivers detailed plans and specifications to Landlord and obtains the prior written approval of the Pima County Administrator or his designee.

7.3. **Construction of Alterations.** All Alterations shall be constructed in a good and workmanlike manner in compliance with the approved plans and specifications and with all applicable laws, rules, and regulations, including all applicable building, electrical and other codes.

8. **Concessions.** With the exception of vending machines, Tenant may not operate concessions or food services on the Premises.

9. **USE OF PREMISES.** Tenant may use and occupy the Premises as parking for buses and employees' cars (the "**Permitted Activities**").

9.1. **Expense of Tenant.** Tenant shall conduct all of its operations at the Premises at its own expense and without contribution from Landlord. Tenant shall not suggest state or imply that Landlord will participate, guarantee or otherwise assist in any financial obligation undertaken by Tenant with respect to its operations on the Premises.

9.2. **Hours of Operation; Open to Public.** Tenant may conduct the Permitted Activities on the Premises twenty-four (24) hours per day.

9.3. **Compliance with Laws.** Tenant shall 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.

9.4. **Prohibited Activity.** Tenant may not permit any unlawful activities on the Premises, or any activities that unduly interfere with activities of neighboring property owners/occupants. Tenant shall comply with all local, state and federal laws including but not limited to Pima County Code Chapter 9.30—"Regulation of Excessive, Unnecessary and Annoying Noises". Possession, consumption, or sale of alcoholic beverages shall not be permitted on the Premises. *No exceptions shall be permitted.*

9.5. **Activities not Insured or that Affect Insurance.** Tenant shall not conduct any activity or permit any activity to be conducted on the Premises which is not covered by the insurance policies provided pursuant to Section 12 herein without first obtaining the written consent of Landlord and without providing additional insurance covering the activity or event and with coverage limits and carriers acceptable to Landlord. Tenant shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the existing rate of or affect any fire or other insurance upon the Premises or any of its contents or cause a cancellation of any insurance policy covering the Premises or any part thereof or any of its contents.

10. ENVIRONMENTAL COMPLIANCE.

- 10.1. **Hazardous Materials Defined.** As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Arizona or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) petroleum or petroleum products; or (ii) defined as a Hazardous Material under A.R.S. 26-301(8).
- 10.2. **Hazardous Materials Prohibited; Clean Air Act.** Tenant may not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept, or used in or about the Premises by Tenant, its agents, employees, contractors or invitees, without the prior written consent of Landlord, other than such Hazardous Materials as are customarily necessary or useful to the type of operations permitted under this Lease and actually being carried out by Tenant on the Premises which will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Materials. Tenant's operations on the Premises must comply with applicable provisions of the Clean Air Act, 42 U.S.C. 7401 et seq. and Arizona Revised Statutes, Title 49, Chapter 3 and any other applicable environmental laws or regulations.
- 10.3. **Indemnity.** If (i) Tenant breaches the obligations stated in the preceding paragraph, (ii) the presence (whether consented to by Landlord or otherwise) of Hazardous Material on the Premises or on or in the soil or ground water under or adjacent to the Premises is caused or permitted by Tenant, its agents, employees, contractors or invitees, (iii) contamination of the Premises or soil or ground water under or adjacent to the Premises by Hazardous Material otherwise occurs for which Tenant is legally liable, or (iv) contamination occurs elsewhere in connection with the transportation by Tenant of Hazardous Material to or from the Premises, then Tenant will indemnify, protect, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities or losses (including, without limitation, diminution in value of the Premises or any part thereof, damages for the loss or restriction on use of usable space or of any amenity of the Premises or any part thereof, damages arising from any adverse impact on marketing of space with respect to the Premises or any part thereof, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arose or arises during or after the term of this Lease as a result of such contamination. The foregoing obligation of Tenant to indemnify, protect, defend and hold

Landlord harmless includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, restoration or other response work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present, as a result of any action or inaction on the part of Tenant, its agents, employees, contractors or invitees, in the Premises or the soil or ground water on, under or adjacent to the Premises, or elsewhere in connection with the transportation by Tenant of Hazardous Material to or from the Premises.

- 10.4. **Clean-up.** Without limiting the foregoing, if the presence of any Hazardous Material on or in the Premises, or the soil or ground water under or adjacent to the Premises caused or permitted by Tenant, or its agents, employees, contractors or invitees results in any suspected contamination of the Premises, the soil or ground water under or adjacent to the Premises, Tenant must promptly notify Landlord in writing and take all actions at its sole expense as are necessary to return the Premises, or such soil or ground water to the condition existing prior to the introduction of any such Hazardous Material to the Premises, or to such soil or ground water; provided that Landlord's approval of such actions is first obtained, which approval may not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises.
- 10.5. **Pre-Existing Contamination.** Landlord agrees that any Hazardous Materials contaminating the Premises prior to possession of the Premises by Tenant will not result in liability for Tenant under this Paragraph except to the extent such contamination is aggravated by the action or inaction of Tenant.
- 10.6. **Notices Regarding Environmental Conditions.** Tenant must, within ten (10) business days following receipt thereof, provide Landlord with a copy of (i) any notice from any local, state or federal governmental authority of any violation or administrative or judicial order or complaint having been filed or about to be filed against Tenant or the Premises alleging any violation of any local, state or federal environmental law or regulation or requiring Tenant to take any action with respect to any release on or in the Premises or the soil or ground water under or adjacent to the Premises of Hazardous Material, or (ii) any notices from a federal, state or local governmental agency or private party alleging that Tenant may be liable or responsible for cleanup, remedial, removal, restoration or other response costs in connection with Hazardous Material on or in the Premises or the soil or ground water under or adjacent to the Premises or any damages caused by such release.

- 10.7. **Survival.** Tenant's obligations under this Section will survive the expiration or earlier termination of this Lease and vacation of the Premises.

11. REPAIR, MAINTENANCE AND UTILITIES.

- 11.1. **Maintenance and Repairs.** All Alterations on the Premises, both outside and inside, must be put and kept in good order and repair by Tenant at Tenant's sole cost and expense, and Tenant must make all repairs and replacements, ordinary as well as extraordinary, foreseen and unforeseen, structural or otherwise, that may be necessary or required, except as provided in Section 11.2 below. If Tenant fails to make such repairs, restoration or replacements, Landlord may make them, and Tenant must reimburse Landlord for the costs within ten days after Landlord sends Tenant an invoice.
- 11.2. **Damage for Casualty.** If any improvement on the Premises is damaged or destroyed by any cause whatsoever, Tenant must, with reasonable promptness, repair and replace the same at its own expense, to at least the condition existing immediately prior to the damage or destruction, and must do so even though the proceeds of any insurance policies covering the loss are insufficient to reimburse Tenant therefore, and Tenant's obligations under this Lease will not be terminated or suspended; except that, that if the Premises are substantially destroyed by fire or other casualty at any time during the last five (5) years of the Initial Term, or the Option Period, then Tenant may terminate this Lease by written notice given to Landlord within sixty (60) days after the date of such destruction, and Tenant will be discharged from responsibility to repair the damage, but Tenant must in that event, at Tenant's sole cost and expense, clean and clear the Land of all debris and repair the Land and install landscaping so that the Land blends in reasonably well with the surroundings.
- 11.3. **Utilities** Tenant must, at its sole cost and expense, arrange for the furnishing of all utilities, including electricity, gas, water and sewer, and telecommunication services, fire protection lines and hydrants, that are necessary for its operations on the Premises, and Tenant covenants and agrees to pay all charges for such utilities and services directly to the supplier thereof. Landlord will not be liable in any way to Tenant for any failure or defect in the supply or character of utilities or telecommunications services furnished to the Premises by reason of any requirement, act or omission of the provider of such service or for any other reason.

12. INSURANCE; INDEMNIFICATION.

- 12.1. **Maintenance of Insurance.** Tenant shall procure and maintain, until all of Tenant's obligations, including any warranty periods under this Lease, are satisfied, insurance against claims for injury to persons or damage to

property which may arise from or in connection with the performance of the work hereunder by the Tenant, its agents, representatives, employees or subcontractors.

- 12.2. **Minimum Requirements.** The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained in this Lease. Landlord in no way warrants that the minimum limits contained herein are sufficient to protect the Tenant from liabilities that might arise out of the performance of the work under this Lease by the Tenant, its agents, representatives, employees or subcontractors, and Tenant is free to purchase additional insurance.
- 12.3. **Types of Insurance Required.** From the effective date of this Lease until it is terminated, Tenant shall provide coverage with limits of liability not less than those stated below:
- 12.3.1. Commercial General Liability. Coverage at least as broad as ISO form CG 00 01 in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$1,000,000) aggregate covering the Premises, endorsed to include Pima County as additional insured with coverage at least as broad as ISO form CG 20 10, and covering all activities carried out at the Premises.
- 12.3.2. Business Automobile Liability. Tenant shall provide Auto Liability coverage for Bodily Injury and Property Damage in the amount of \$1 million combined single limit for vehicles used in the performance of services under this Lease and any renewals thereof.
- 12.3.3. Property Insurance. Tenant shall obtain and keep in force during the term of this Lease a policy of insurance covering loss or damage to the Premises in the amount of the full replacement value thereof, providing protection against all vandalism, malicious mischief, special extended perils (all risk) and shall deliver to Landlord a Certificate of Property Insurance, with Landlord named as additional insured. Said Certificate must be satisfactory to Landlord. Tenant will provide a copy of Tenant's policy of Property insurance to Landlord annually.
- 12.4. **Additional Insurance Requirements.** The policies shall include, or be endorsed to include, the following provisions:

- 12.4.1. Additional insured shall be Pima County, its departments and its officers, officials, agents, and employees wherever additional insured status is required. Such additional insured shall be covered to the full limits of liability purchased by Tenant, even if those limits of liability are in excess of those required by this Lease.
- 12.4.2. Each insurance policy shall contain a severability of interests provision and shall waive subrogation against Pima County.
- 12.4.3. Tenant's liability insurance coverage shall be primary insurance with respect to all other available sources.
- 12.4.4. Coverage provided by Tenant shall not be limited to the liability assumed under the indemnification provisions of this Lease.
- 12.4.5. Policies shall contain a waiver of subrogation against Pima County.
- 12.5. **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Lease shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Pima County.
- 12.6. **Acceptability of Insurers.** Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. Landlord in no way warrants that the above-required minimum insurer rating is sufficient to protect Tenant from potential insurer insolvency.
- 12.7. **Verification of Coverage.**
 - 12.7.1. Tenant shall furnish Landlord with certificates of insurance (ACORD form or equivalent approved by Pima County) as required by this Lease. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
 - 12.7.2. All certificates and endorsements are to be received and approved by the Pima County Risk Manager before occupancy or work commences under this Lease. Each insurance policy required by this Lease must be in effect at or prior to occupancy or commencement of work under this Lease and remain in effect for the duration of this Lease. Failure of Tenant to maintain the insurance policies as required by this Lease, or to provide evidence of renewal, is a material breach of this Lease.

- 12.7.3. All certificates required by this Lease shall include the Pima County project/contract number and the project number and description shall be noted on the certificates of insurance. Landlord reserves the right to require complete, certified copies of all insurance policies required by this Lease at any time.

12.8. **Approval.**

- 12.8.1. Any modification or variation from the insurance requirements in this Lease shall be made by the Landlord's Risk Management Division, whose decision shall be final. Such action will not require a formal amendment to this Lease, but may be made by administrative action.
- 12.8.2. Any construction or renovation projects on the Premises will require additional insurance coverage such as Builder's Risk insurance. Pima County Risk Management will provide the additional insurance requirements required for any construction or renovations.

- 12.9. **Indemnification.** Tenant agrees that, to the fullest extent permitted by law, Tenant will indemnify, defend, and hold harmless Landlord, its officers, employees and agents from and against any and all losses, costs, or expenses (including reasonable attorney fees) incurred or suffered by Landlord as a result of any damages to property or injuries to persons (including death), or any suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of or directly related to any act, omission, fault or negligence by the Tenant, its agents, employees, invitees, contractors or anyone under its direction or control or acting on its behalf, or anyone permitted by Tenant to conduct any activity on the Premises, or in connection with any use or occupancy of the Premises under the terms of this Lease.

13. **DEFAULT/TERMINATION.**

- 13.1. **Tenant Default.** The occurrence of any one or more of the following events will constitute a default and breach of this Lease by Tenant for which Landlord may terminate this Lease:

- 13.1.1. Operation of Premises. The vacating or abandonment of the Premises, or cessation of activities thereon, or any portion thereof, by Tenant, that continues for a period of ten (10) calendar days after notice of such default is sent by Landlord to Tenant.

- 13.1.2. Monetary Obligations. The failure by Tenant to make any payment required to be made by Tenant under this Lease, as and when due, that continues for a period of ten (10) calendar days after notice from Landlord that such payment is due.
- 13.1.3. Insurance. The failure by Tenant to maintain insurance policies as set forth above for any period of time, in which event Tenant must immediately cease all operations at the Premises until such insurance is obtained. In the event of such a default, Landlord may, in Landlord's sole discretion, obtain necessary insurance coverage in which event Tenant must, within five (5) days of demand, reimburse and pay to Landlord the full amount of any costs and premiums expended by Landlord to obtain such coverage.
- 13.1.4. Violation of Law. Violation of any law by Tenant, or the conduct of any unlawful activities on the Premises that are permitted by Tenant, either tacitly or explicitly, or that Tenant has not taken reasonable means to prevent after Tenant becomes or in the exercise of reasonable diligence should have become aware that such activities are being conducted.
- 13.1.5. Health and Safety Violation. Any action or omission by Tenant that, in Landlord's reasonable judgment, causes a threat to the health or safety of the general public or the users of the Premises or neighboring properties.
- 13.1.6. Other Covenants. The failure by Tenant to observe or perform any other of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant that continues for a period of thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant will not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion. The notice and cure periods in this paragraph do not apply to the automatic termination provisions in Section 5.3.
- 13.2. **Landlord Default**. Landlord will be deemed to be in default hereunder if Landlord fails to perform any covenant or condition of this Lease to be performed by Landlord and such failure continues for thirty (30) days after written notice and demand from Tenant, unless the failure is of such a character as to require more than thirty (30) days to cure, in which event

Landlord will be in default only if it fails to initiate the cure within thirty (30) days, and thereafter diligently pursue the same to completion.

13.3. Remedies.

13.3.1. All Remedies Available. Either party may pursue any remedies provided by law and in equity for the breach of this Lease, including termination of the Lease. No right or remedy is intended to be exclusive of any other right or remedy and each will be cumulative and in addition to any other.

13.3.2. Cure by Landlord. Should Tenant fail to perform in a timely manner any of the covenants or terms of this Lease on its part to be performed, Landlord may (but is not obligated to) perform the same and charge Tenant for the costs thereof, together with interest thereon, at the greater of (i) ten percent (10%) per annum, or (ii) the rate set by statute for interest on judgments, from the date upon which the expense is incurred until paid by Tenant.

14. **NOTICES.** All notices given under this Lease must be in writing and either served personally or sent by certified or registered mail, return receipt requested, to the parties as indicated below or to such other persons, or addressees as either party may designate in writing to the other party:

If to Tenant: Mountain View Tours
P.O. Box 91890
Tucson, AZ 85752-1890

If to Landlord: Clerk of the Board of Supervisors
Pima County
130 West Congress
Tucson, AZ 85701

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

15. **ASSIGNMENT/SUBLETTING.** Tenant may not, either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and may not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or allow any other person (the employees, agents, servants and invitees of Tenant excepted) to occupy or use the Premises, or any portion thereof, without first obtaining the written consent of Landlord.

16. **SURRENDER OF PREMISES/HOLDING OVER.** On the last day or earlier termination of the Term of this Lease, Tenant must quit and surrender the Premises, in good condition and repair, normal wear and tear excepted. Tenant's obligations under this Section will survive the expiration or earlier termination of the Term of this Lease.
17. **SUSTAINABILITY PLAN.** In accordance with the County's Sustainability Plan, Tenant must use all reasonable efforts to use recycled products for its operation within the Premises, and re-use and recycle materials utilized in the Premises.
18. **CANCELLATION FOR CONFLICT OF INTEREST.** This Lease may be cancelled for conflict of interest pursuant to A.R.S. § 38-511, the provisions of which are incorporated herein by this reference.
19. **TENANT NOT AN AGENT OF LANDLORD.** Tenant is not an agent of Landlord for any purpose under this Lease or otherwise. Tenant will control activities on the Premises, and Landlord will not control those activities. Tenant's employees and servants will not be under the control of Landlord.
20. **NON-DISCRIMINATION.** Tenant agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive Order 99-4 and amends Executive Order 75-5 and may be viewed and downloaded at the Secretary of State of Arizona's website <http://www.azsos.gov/aar/2009/46/governor.pdf> which is hereby incorporated into this Lease as if set forth in full herein. During the performance of this Lease, Tenant shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
21. **NON-APPROPRIATION.** Notwithstanding any other provision in this Lease, this Lease may be terminated if for any reason, the County's Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Lease. In the event of such termination, County will have no further obligations to Tenant.
22. **CHOICE OF LAW.** The laws of the State of Arizona will apply to any action relating to this Lease and any court action must be brought and maintained in a court in Pima County, Arizona.
23. **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 Lease to be performed by the other party, or to take any action permitted as a result thereof, will 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. The acceptance by either party of sums less than may be due and owing to it at any time will not be construed as an accord and satisfaction.

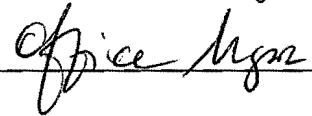
24. **INTERPRETATION OF LEASE.** The parties acknowledge that each has had the opportunity to review this Lease with its counsel. This Lease will not be construed in favor or against either of the parties but will be interpreted fairly and equitably to effectuate the intent of the parties. All provisions contained in this Lease will bind and inure to the benefit of the parties hereto, their successors and assigns.
25. **ENTIRE AGREEMENT.** This Lease contains the entire agreement between the parties and all previous agreements, negotiations, or understandings are superseded by and merged in this Lease. This Lease may be modified by the parties only by writing executed with the same formalities as this Lease.
26. **AMENDMENT.** This Lease may not be amended except by a written instrument duly executed by both parties.
27. **ATTORNEY'S FEES.** In the event any action, suit or proceeding at law or in equity is instituted with respect to this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, expenses and court costs incurred.
28. **RECORDING.** This Lease may be recorded by Landlord or Tenant.
29. **TIME OF THE ESSENCE.** Time is of the essence of this Lease.
30. **AUTHORITY.** The undersigned represent to each other that they have full power and authority to enter into this Lease, and that all necessary actions have been taken to give full force and effect to this Lease. The undersigned further agree to produce all documents reasonably requested by the other party to evidence that the foregoing representation is true and correct, including but not limited to any partnership agreements, trust documents, operating agreements, articles of incorporation, or shareholder agreements.
31. **ATTORNEY'S REVIEW.** Pima County's Attorney is signing as to form only, and represents solely the interests of County. Each party shall bear the costs, if any, of their attorney incurred in connection with the negotiation and drafting of this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day, month and year written below.

TENANT: Mountain View Tours


Name

2/10/15
Date

Its: 

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

Chair, Board of Supervisors

Date

ATTEST:

Robin Brigode, Clerk of Board


Date

APPROVED AS TO CONTENT:


John Bernal, Deputy County Administrator – Public Works


Neil J. Konigsberg, Manager, Real Property Services

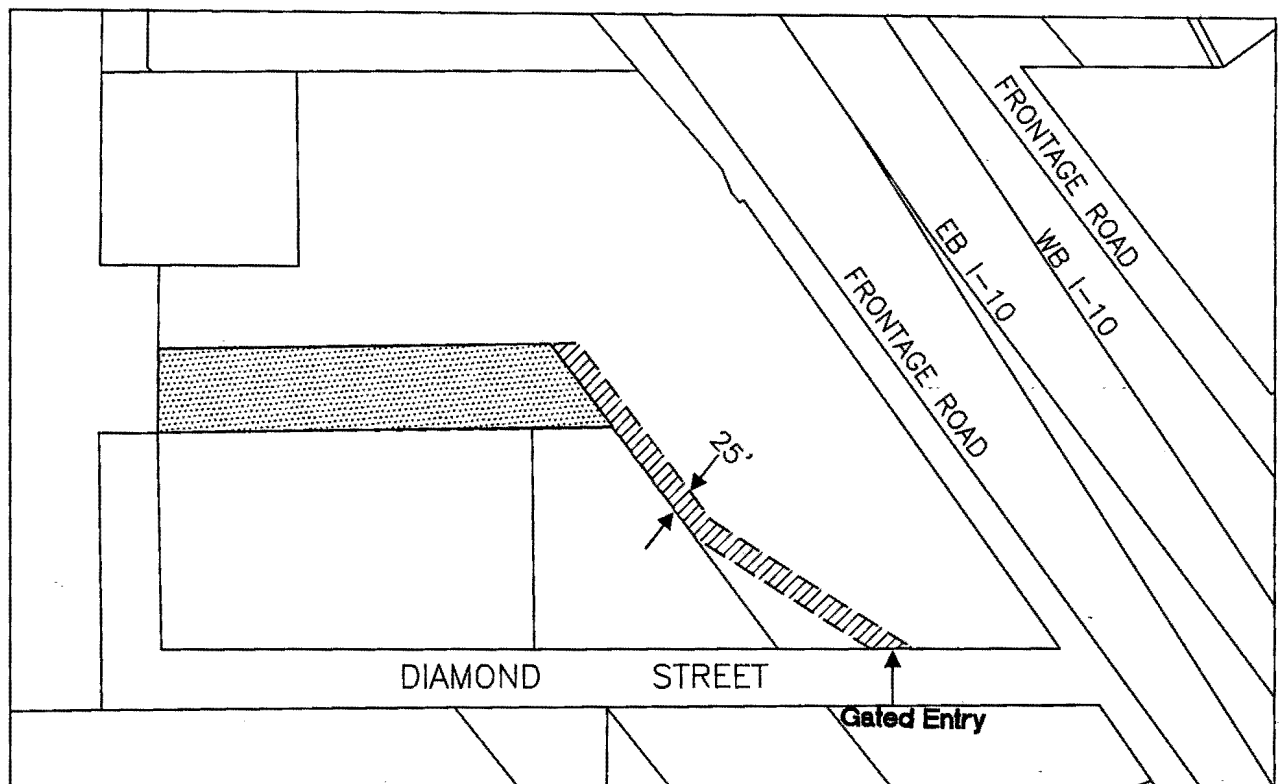
APPROVED AS TO FORM:




Tobin Rosen, Deputy County Attorney, Civil Division

SECTION 17
TOWNSHIP 13 SOUTH
RANGE 13 EAST

EXHIBIT "A"

Mountain View Tours Lease Area & Preferred Access Route
3180 W. Diamond Street



-  42,357 sq ft LEASE AREA
-  25' PREFERRED ACCESS ROUTE



PIMA COUNTY DEPARTMENT OF TRANSPORTATION
ENGINEERING INFORMATION MANAGEMENT

DRAWING NOT TO SCALE

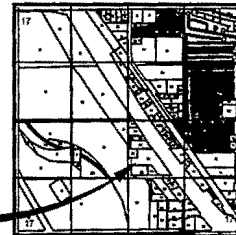
DRAWN BY: CPerez

DATE: 02/02/2015

SECTION 17
TOWNSHIP 13 SOUTH
RANGE 13 EAST

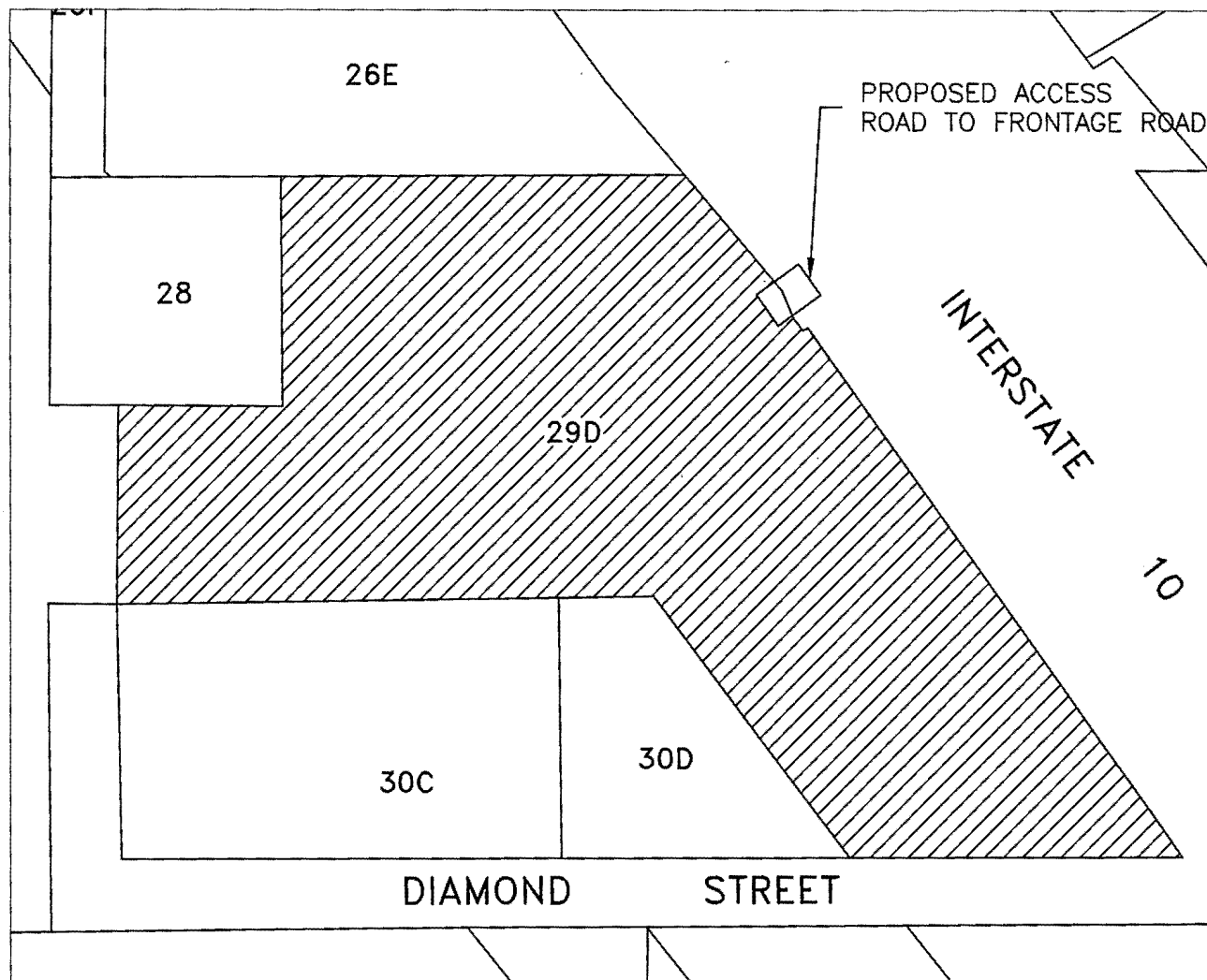
Exhibit "B"

SUBJECT AREA



SECTION 17 G&SRM
PIMA COUNTY, ARIZONA

DFA LAND EXCHANGE



PARCEL



101-20-029D



PIMA COUNTY DEPARTMENT OF TRANSPORTATION
ENGINEERING INFORMATION MANAGEMENT

DRAWING NOT TO SCALE

DRAWN BY: BSMITH

DATE: JAN 2015