



BOARD OF SUPERVISORS AGENDA ITEM REPORT

CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: September 3, 2019

** = Mandatory, information must be provided*

or Procurement Director Award ☐

***Contractor/Vendor Name/Grantor (DBA):**

Heirloom Farmers Markets, Inc.

***Project Title/Description:**

Rillito Park Farmer's Market

***Purpose:**

Heirloom will continue to provide a weekly Farmers Market at Rillito Regional Park. The market showcases 85 small business vendors offering a variety of food, crafts and services.

***Procurement Method:**

Procurement Exempt A.R.S. 11-933

***Program Goals/Predicted Outcomes:**

Goal is to provide a venue whereby a variety of vendors can showcase and sell product. This ranges from produce, arts and crafts, services, etc.

***Public Benefit:**

The public benefits by receiving a farmers market that showcases a wide variety of agricultural products, is easily accessible and accepts EBT/SNAP cards. In addition, this is a revenue generating agreement. Pima County estimates it will receive \$110,000 over the five year period. There is no cost to Pima County.

***Metrics Available to Measure Performance:**

None

***Retroactive:**

No

To: COB - 8.20-19
ver. 1
GJS - 12 (1)

Contract / Award Information

Document Type: CTN Department Code: PR Contract Number (i.e.,15-123): 20-023
Effective Date: 11/18/2019 Termination Date: 11/17/2024 Prior Contract Number (Synergen/CMS): _____
☐ Expense Amount: \$* _____ ☒ Revenue Amount: \$ 110,000.00

*Funding Source(s) required: General Fund

Funding from General Fund? ☐ Yes ☒ No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No

If Yes, is the Contract to a vendor or subrecipient? _____

Were insurance or indemnity clauses modified? ☐ Yes ☒ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No

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

Amendment / Revised Award Information

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

Is there revenue included? ☐ Yes ☐ No If Yes \$ _____

*Funding Source(s) required:

Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards) ☐ Award ☐ Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e.,15-123): _____
Effective Date: _____ Termination Date: _____ Amendment Number: _____
☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____

*All Funding Source(s) required:

*Match funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

*Match funding from other sources? ☐ Yes ☐ No If Yes \$ _____ % _____

*Funding Source: _____

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)? _____

Contact: Robert Padilla, Deputy Director

Department: Natural Resources, Parks and Recreation

Telephone: 724-5235

Department Director Signature/Date: [Signature] 8/14/19

Deputy County Administrator Signature/Date: [Signature] 8/16/19

County Administrator Signature/Date: [Signature] 8/17/19
(Required for Board Agenda/Addendum Items)

Pima County Department of Natural Resources, Parks and Recreation

Project: Farmer's Market

Contractor: Heirloom Farmers Markets, Inc.
225 W. Flores
Tucson, AZ 85705

Amount: \$110,000.00 (Revenue Contract)

Contract No.: CTN-PR-20*23

Funding: N/A - Revenue

**AGREEMENT FOR NON-EXCLUSIVE OPERATION OF A FARMERS' MARKET AT RILLITO
REGIONAL PARK**

1. **PARTIES.** This Agreement for the non-exclusive operation of a farmers' market at Rillito Regional Park ("Agreement") is entered into between Pima County ("County") and Heirloom Farmers Markets, Inc., an Arizona Non-profit Corporation, (Market") for the non-exclusive use of portions of Rillito Regional Park for the operation of a farmers' market, pursuant to the provisions of A.R.S. section of §11-933.
2. **BACKGROUND.** County and Market are mutually interested in providing facilities for and conducting a professional farmers market at portions of Rillito Regional Park for the benefit of the residents of Pima County.
3. **TERM.** The term of this Agreement shall be five (5) years commencing on October 18, 2019 and ending on October 17, 2024, (the "Initial Term") unless otherwise terminated. The term of this Agreement may be extended, for (1), five (5) year option upon written approval of the parties. Market must notify County six (6) months in advance of its request for renewal of this Agreement.
4. **PURPOSE.** County grants Market the non-exclusive use of portions of Rillito Regional Park including the parking lot and the new external booth structures (the "Farmers Market Structure"), located at 4502 N. First Avenue, Tucson, AZ 85718, as noted in Exhibit A, herein after referred to as the "Premises," for the purpose of conducting the Farmers' Market under the terms and conditions of this Agreement. Market may use the Premises on Sundays for the purpose of holding a Farmers Market on the following terms and conditions as detailed below:
 - 4.1 For the purpose of setting up:
Each Sunday beginning October 20, 2019, no earlier than 6:00 A.M.
 - 4.2 For the purpose of holding the daily sessions:
Each Sunday during the term of this agreement from 8:00 A.M to 1:00 P.M.
 - 4.3 During actual live racing days during the racing season, scheduled between January 1 and April 5 of each year, County may require Market to end the daily session by 12:30pm each day.

5. COUNTY'S RIGHT TO CANCEL DAILY SESSIONS.

- 5.1 Market recognizes that County provides access to Rillito Park for other users and events, and that some such events require the entire parking capacity of Rillito Park. County reserves the right to cancel Market's daily session with sixty (60) days' notice in the event that another event will require the entirety or a significant portion of the available parking.
- 5.2 Market is not entitled to compensation or consideration of any kind for cancelation of any of its daily sessions by County under this Agreement.

6. FEES. Market shall pay County fees for its use of the Premises as follows;

- 6.1 On or before October 17, 2019, Market will pay County \$100,000 to be used for the County's construction of an additional ramada on the Premises. If Market does not pay County \$100,000 on or before October 17, 2019, County may at its discretion terminate this Agreement.
- 6.2 Market shall pay the greater of four hundred dollars (\$400.00) per day or twelve percent (12%) of all Gross Revenues received by Market for all space rentals and any other direct revenue to Market, for each daily session of the farmers' market that Market operates on the Premises, payable monthly on the first Monday of each month during the initial term.
- 6.3 For the purposes of this agreement, the term "Gross Revenues" means all income receipts from any source arising from operations or activities that Market conducts on the Premises. Market shall provide Pima County Finance a gross revenues report covering the preceding month's activity by the 5th of the following month.
- 6.4 In the event the Pima County Board of Supervisors adopt amendments to the Rillito Regional Park facility fee schedule for the Pima County Department of Natural Resources, Parks and Recreation during the term of this Agreement, the fees due from Market to County shall automatically adjust to correspond with the amended fee schedule without the necessity of a formal amendment to this Agreement. Notice of such changes to the fee schedule shall be provided by County to Market within ten (10) days of occurrence, and Market shall enter into compliance with the amended fee schedule within ten (10) days of receipt of notice.
- 6.5 In the event that County cancels a daily session as per Section 5, or Market cancels a daily session due to inclement weather no Market fee shall be due.
- 6.6 Market shall make all checks payable to PIMA COUNTY.

7. ALTERATIONS AND IMPROVEMENTS TO PREMISES

- 7.1 Consent Required. Tenant may not make any improvements, alterations, additions,

or changes to the Premises (collectively the "Alterations") without obtaining prior written consent from:

- 7.2 NRPR's director or designee if the cost of the Alterations is less than \$50,000.00;
- 7.3 County's Administrator or his designee if the cost of the Alterations is greater than \$50,000.00 and less than \$100,000.00; and
- 7.4 County's Board of Supervisors if the cost of the Alterations is more than \$100,000.00.
- 7.5 Plans and Specifications. Market will provide County with plans and specifications developed by an Arizona registered architect or engineer for county's review prior to initiating any work. County has forty-five (45) days after receipt of the Notice of Alterations to approve or reject the proposed Alterations. Failure of County to respond to the Notice of Alterations within forty-five (45) days after receipt of the Notice of Alterations by County constitutes approval.

8. DAILY SESSION REQUIREMENTS.

- 8.1 Market shall use only qualified vendors who may include:
- 8.2 Producers of Food Products on agricultural lands, farms and gardens.
- 8.3 "Producers" includes owners, proprietors or tenants of agricultural lands, orchards, farms and gardens whereon food products are grown, raised or prepared for market.
- 8.4 "Food Products" include every product of the soil and sea in its natural or manufactured state, livestock processed for consumption (including but not limited to swine and fowl), eggs, milk, and the products thereof. No live animals shall be sold or offered for sale at any farmers' market.
- 8.5 Market shall permit vendors to participate in the Farmers' Market based on criteria established by Market and approved by County.
- 8.6 Vendors that sell kitchen or other crafts, limited to five percent (5%) of the overall mix of vendors.
- 8.7 Market shall not permit vendors to affix or anchor anything to County property. All Vendor equipment shall be freestanding.
- 8.8 County agrees to provide electricity and water as available for each Farmers' Market Sunday session. Market will be responsible for electrical costs associated with each session. County may require Market to provide temporary restroom facilities at Market's sole cost.
- 8.9 Market agrees to furnish normal janitorial and trash removal service for the Premises including the parking lot and nearby restrooms, and to return all utilized facilities and grounds to the same condition of cleanliness that the facilities were in prior to each Sunday use.

- 8.10 Parking at Rillito Park is provided free of charge. Market may not charge members of the public for parking.
- 8.11 Market shall take all precautions to ensure that no damage to the Premises occurs. If any damage occurs, Market shall, at its sole expense, make the necessary repairs under County's supervision. County may, at its sole option, make the necessary repairs and invoice Market for County's documented costs. Market shall pay any such invoices within thirty (30) days of receipt.
- 8.12 Market shall be solely responsible for all damages to the Premises caused by the Farmers' Market, its vendors, its employees, its volunteers, or its patrons.
- 8.13 Market shall be responsible for supplying a sufficient number of properly placed trash receptacles to manage all waste products generated from each Sunday session.
- 8.14 Market shall be responsible to keep the nearby restrooms clean and well supplied during the operation of the Farmers' Market. County will provide clean and well supplied restrooms at the beginning of each Sunday session. Additional restroom supplies may be available for Market to use as needed.
- 8.15 It will be the responsibility of the Market to provide adequate portable toilets during any sponsored special promotion that may require additional toilets to meet all applicable health and safety requirements.
- 8.16 Market shall provide a trash roll-off and ensure all trash from each Sunday session is properly deposited in the roll-off immediately upon completion of each daily session. Roll-offs must be emptied in a timely manner. All fees associated with garbage removal occasioned by the Farmers' Market shall be borne by Market.
- 8.17 Market shall leave the Premises in pre-activity condition. No equipment may be removed or relocated without authorization by Pima County Department of Natural Resources, Parks and Recreation Supervisor, Martina Gonzales (520-419-2369).
9. **DAILY SESSIONS CLEAN UP.** Market shall be responsible for clean-up after each daily session. All refuse shall be deposited in waste containers. Failure to clean-up shall result in County invoicing Market for County's reasonable costs for clean-up.
10. **SESSION SECURITY.** Market shall be responsible to provide all necessary security services for the daily sessions at Markets' sole cost and expense.
11. **DAMAGES.** In addition to terminating this Agreement, County may recover all damages and payments accrued, accruing or arising out of any breach by Market of any of the terms and conditions of this Agreement. With the exception of permitted vehicle parking in the parking lot during the Farmers' Market, no vehicles shall be permitted on turf or any other areas within the Rillito Racetrack.

- 11.1 Any damage resulting from the parking of vehicles on the lot during any Farmers' Market shall be repaired at Market's sole expense and to the satisfaction of County.

12. LIENS

- 12.1 With respect to improvements undertaken by Market, Market shall pay all liens of contractors, subcontractors, mechanics, laborers, or material providers and all items of like character that are the responsibility of the Market, and shall indemnify and defend County against all legal costs and charges resulting from Market's failure to do so.

- 12.2 Market is not the agent of County and shall have no authority to create any liens for labor or material in County's interest in the Premises and all material providers, contractors, mechanics, and laborers are charged with the notice that they must look to Market only, to secure payment of all bills for any work done or material furnished during the term of this Agreement. Market shall not purchase any materials, equipment, or supplies on the credit of County. Market shall not pledge in any manner the credit of County for any materials, stock or other items that Market may purchase for use at the Premises.

13. **HEALTH PERMITS.** Market shall obtain all necessary health permits from Pima County Health Department at Market's sole cost and expense.

14. **INDEMNIFICATION.** Market shall indemnify, defend and hold harmless County, its officers, employees, and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands, or damages of any kind or nature arising out of Market's use of the Premises pursuant to this Agreement to the extent arising from any act, omission, fault, or negligence by Market or its officers, employees, agents, vendors, patrons or anyone under its direction or control or on its behalf in connection with the Agreement.

15. **STATUS OF USER.** The status of Market shall be that of an independent contractor and neither Market nor its employees shall be considered an employee of Pima County and they shall not be entitled to receive any fringe benefits associated with regular or other County employment and shall not be subject to the provisions of the Pima County Merit System. Market shall be responsible for development and operation of the Farmers' Market without supervision of the County.

16. **ALCOHOL.** With prior written approval of County, Market may serve and sell alcoholic beverages for consumption on the Premises provided Market complies with applicable County and State liquor laws and provides County with certificates proving that Market has acquired the required insurance set forth herein.

17. **NOISE.** Market shall not violate any of the noise provisions of the City of Tucson Code, Chapter 16, Article IV, Section 16-31 Excessive Noise, or any provisions of the Pima County Code Title 9, Chapter 9.30 Regulation of Excessive, Unnecessary and Annoying

Noises. Music/sound must be played at a level as not to disturb other park patrons or neighbors (NRPR Park Rule 5.020). No excessive sound shall occur before 10:30 a.m. or later than 10:00 p.m.

18. KEYS, VEHICLE ACCESS, LIGHTING. County may provide to Market access to facility keys and lighting controls and vehicle access to restricted areas. Market must contact Martina Gonzales prior to any daily session to request keys or special access.

19. VIDEO CAMERAS. Market and County may use video and/or digital cameras to photograph and/or record Market's daily session. County reserves the right to use any images recorded at daily sessions for any future advertising or use on County's web site.

20. SIGNS, BANNERS, AND DECORATIONS. Market must seek prior approval from County for placement of signs, banners, and decorations. County will determine the method of attachment of such items, and County will not unnecessarily withhold approval for such items. Costs incurred for the purchase, installation, and removal of such items are the sole responsibility of Market.

21. INSURANCE. Market shall obtain and maintain, at its own expense, during the entire term of this Agreement, the following type(s) and amounts of insurance.

21.1 Commercial General Liability -Occurrence Form,

Policy shall include Bodily Injury, Property Damage as well as the following Coverage's:

• General Aggregate	\$2,000,000.00
• Products:Completed Operations Aggregate	\$2,000,000.00
• Broad Form Contractual Liability	\$2,000,000.00
• Personal and Advertising Injury	\$2,000,000.00
• Each Occurrence	\$2,000,000.00
• Damage to Rented Property	\$50,000.00

21.2 Liquor Liability Policy Occurrence Form (may be under CGL Policy or by specialized policy) With Policy limit at least \$2,000,000.00 per occurrence and \$2,000,000.00 general aggregate.

Market may acquire the additional insurance by purchase from a private broker.

21.3 Commercial General Liability policy shall contain a waiver of transfer of the rights of recovery (subrogation) against Pima County.

21.4 Liability Insurance policy shall be endorsed to include the following language:
"Pima County is named as Additional Insured's with respect to liability arising out of the activities performed by or on behalf of the Market".

21.5 Automobile Liability Insurance Bodily Injury and Property Damage with a \$1,000,000.00 Combined Single Limit (CSL) for any owned, non-owned and hired

vehicles used in the performance of this Agreement.

21.6 Workers' Compensation and Employers Liability Statutory coverage for Workers' Compensation and for Employees' Liability coverage not less than \$100,000.00 for each accident, \$100,000.00 disease for each employee, and \$100,000.00 disease policy limit.

21.7 Pima County will not be responsible for damages to loss of personal property belonging to Market or its vendors or patrons.

21.8 Market's insurance shall be primary insurance and any insurance carried by Pima County shall be considered non-contributory with respect to all other available sources.

21.9 Market shall provide Pima County with current *Certificates of Insurance* ten (10) days prior to beginning of this agreement. With the exception of ten (10) days' written notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require thirty (30) days' written notice to Pima County.

22. **NOTICES.** Wherever this Agreement requires or permits notice or demand to be given by either party to the other, such notice or demand shall be in writing and given or served either personally or by either regular mail, certified mail (return receipt requested), or by commercial delivery service, addressed to the parties at the addresses specific below and to the following individuals. Either party may change such address by written notice to the other herein provided.

If notice to County:
Chris Cawein, Director
Pima County Natural Resources, Parks & Recreation
3500 W. River Road
Tucson, AZ 85741
(520)724-5000

If notice to Manager:
Executive Director
Heirloom Farmers Markets, Inc.
P.O. Box 65803
Tucson, AZ 85728

23. COUNTY AND CHARITABLE PARTICIPATION.

23.1 County reserves, and at all times shall have the sole right to participate in any Farmers' Market at no charge for the purpose of promoting the County and/or County activities.

23.2 Market shall additionally provide one (1) vendor booth without cost for use by a non-profit arts/cultural/heritage group at County's discretion each day that the Farmers' Market is held.

24. TRAFFIC CONTROL Market shall be responsible at Market's sole cost and expense for any and all necessary traffic control measures for the Farmers' Market. In the event the County determines that additional traffic control is necessary, Market shall hire and utilize qualified traffic control professionals.

25. MARKET PLAN AND REVIEW. Market shall provide County with a Market Plan, fifteen (15) days prior to the start date to be reviewed by the County, as needed, to require compliance with any applicable life safety codes. The Market Plan shall contain a dimensioned site plan indicating the layout of the Rillito Regional Park property to include the following:

25.1 Estimated parking to be used by patrons and vendors.

25.2 Additional security and maintenance measures and traffic control to be employed if applicable.

25.3 The location of any and all temporary structures.

County hereby reserves the right by written notice to Market within five (5) days of receipt of the Market Plan, to require Market to make changes, deletions and additions to the Market Plan and the operation policies described therein as the County may deem reasonably necessary or desirable to the safe and efficient operation of the daily sessions on the Premises. Upon receipt of such notice the Market may request a walk through survey of the Premises with the County Officials. Failure to make any such reasonable changes, deletions or additions requested by the County within five (5) days after receipt of notice thereof shall constitute a default, and County may deny use of the Premises to Market until the County's requested amendments to the Market Plan are made by Market or the Market Plan is otherwise deemed satisfactory by County.

26. ASSIGNMENT AND SUBLETTING. Market shall have no right to assign or sublet any of its rights or obligations under this Agreement.

27. NON DISCRIMINATION/ADA. Market agrees to comply with all applicable provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this Agreement as if set forth in full herein including flow down of all provisions and requirements to any subcontractors. During the performance of this Agreement, Market 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.

28. CONFLICT OF INTEREST. This Agreement is subject to cancellation within five (5) years after its execution pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of County is, at any time while this Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement with respect to the subject matter of the Agreement.

29. COMPLIANCE WITH LIGHT ORDINANCES. Market shall fully comply with any applicable light ordinances of the City of Tucson or Pima County.

30. TERMINATION AND REMEDIES. In the event that County determines Market or its invitees are in breach of any of the conditions set forth in this Agreement, or are causing damage to County facilities, County shall provide written notice to Market detailing the breach within five (5) days of making such determination.

30.1 Upon receiving notice, Market shall have fifteen (15) days to cure the breach. Should Market require additional time to cure, Market may request in writing an additional fifteen (15) days, which County shall grant, in the event County determines, in its sole discretion, that Market is making a demonstrable effort to cure the breach.

30.2 In the event that Market fails to cure the breach within the period provided in section 30.1 above, County may terminate this Agreement upon thirty (30) days written notice to terminate.

30.3 In addition to terminating this Agreement, County may recover all damages and payment accrued, accruing or arising out of any breach of the conditions set forth in this Agreement.

31. COMPLIANCE WITH ALL LAWS. Market shall comply with all federal, state, and local laws, states, ordinances, rules, regulation, standards, policies, and executive orders, without limitation to those designated within this Agreement. The laws of the State of Arizona shall apply to this Agreement. Any court action pursuant to this Agreement shall be brought and maintained in an Arizona court in Pima County.

32. AUDITS. Market shall make available to County, all records and books related to this Agreement upon request by County and within thirty (30) days of receipt of such request at such time and place as shall be designated by County for examination thereof for the purpose of an audit to be performed by an auditor designated by County. Additionally, Market shall provide county an annual financial statement covering the preceding calendar year, containing Balance Sheet, Income Statement, and Statement of Cash Flows, or equivalent documents, by September 30th of each year.


33. FORCE MAJEURE. Except for payment for sums due, neither party shall be liable to the other nor deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of *force majeure*.

The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, *force majeure* includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; floods; lockouts; injunctions-interventions-acts, or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring *force majeure*; which such party is unable to prevent by exercising reasonable diligence. The *force majeure* shall be deemed to commence when the party declaring *force majeure* notifies the other party of the existence of the *force majeure* and shall be deemed to continue as long as the results or effects of the *force majeure* prevent the party from resuming performance in accordance with this Agreement.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

The parties hereto have executed this Agreement on the day, month and year written below.

HEIRLOOM FARMERS MARKETS, INC:



Board President

Date: 8/14/19

PIMA COUNTY:

Richard Elias, Chairman, Board of Supervisors

Date: _____

ATTEST:

Julia Castañeda, Clerk of the Board

APPROVED AS TO CONTENT:



Chris Cawein, Director, Natural Resources, Parks and Recreation

APPROVED AS TO FORM:



Kelli Olson, Deputy Pima County Attorney, Civil Division

EXHIBITA



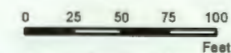
Farmers Market



Rillito Regional Park Farmers Market - Exhibit A

August 2019

1 inch = 100 feet



Property line representations and/or any other type of boundary line or point location contained within this data or displayed within this product are approximate and cannot be used for authoritative location purposes. Users should independently research, investigate and verify all information before relying on it or using it in the preparation of legal documents. Legally-delineable property boundaries can only be established by state-registered professional land surveyors. A list of Arizona Registered Land Surveyors is available at www.asls.org. This product is subject to the GIS Division Disclaimer and Use Restrictions.

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