



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: October 1, 2019

* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Sculpture Tucson.Org, Inc., an Arizona nonprofit corporation ("Sculpture")

***Project Title/Description:**

Lease to Sculpture Tucson Org.

***Purpose:**

Sculpture will lease the property located at 3420 E. River Road (the "Property"). The Property consists of a 1,654 square foot residence and a 1,226 square foot garage/workshop. Sculpture will make capital improvements to the property. Sculpture has requested a 3 year lease. The Resolution for consent to lease was approved on June 18, 2019. Notice was published pursuant to ARS 11-256.01. (File LCP-0017)

***Procurement Method:**

Exempt pursuant to Pima County Code 11.04.020

***Program Goals/Predicted Outcomes:**

Staff recommends that the Board of Supervisors approve the Lease with Sculpture Tucson.Org, Inc.

***Public Benefit:**

Sculpture will work with the local community partners, government entities, and art and business organizations to help artists connect to resources that creates hands on art education programs free to the public.

***Metrics Available to Measure Performance:**

Sculpture will pay \$100.00/month and all utilities; will maintain the Property; and will make improvements to the Property totaling approximately \$25,000, as additional consideration for the lease.

***Retroactive:**

No

Attachment: A location map.

SEP 23 19 01 01 PCLK OF RD

Contract / Award Information

Document Type: CTN Department Code: PW Contract Number (i.e.,15-123): 20*0056
Effective Date: 10/1/2019 Termination Date: 9/30/2022 Prior Contract Number (Synergen/CMS): _____
☐ Expense Amount: \$* _____ ☒ Revenue Amount: \$ 3,600.00

***Funding Source(s) required:**

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: Rita Leon

Department: Real Property Services

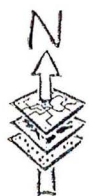
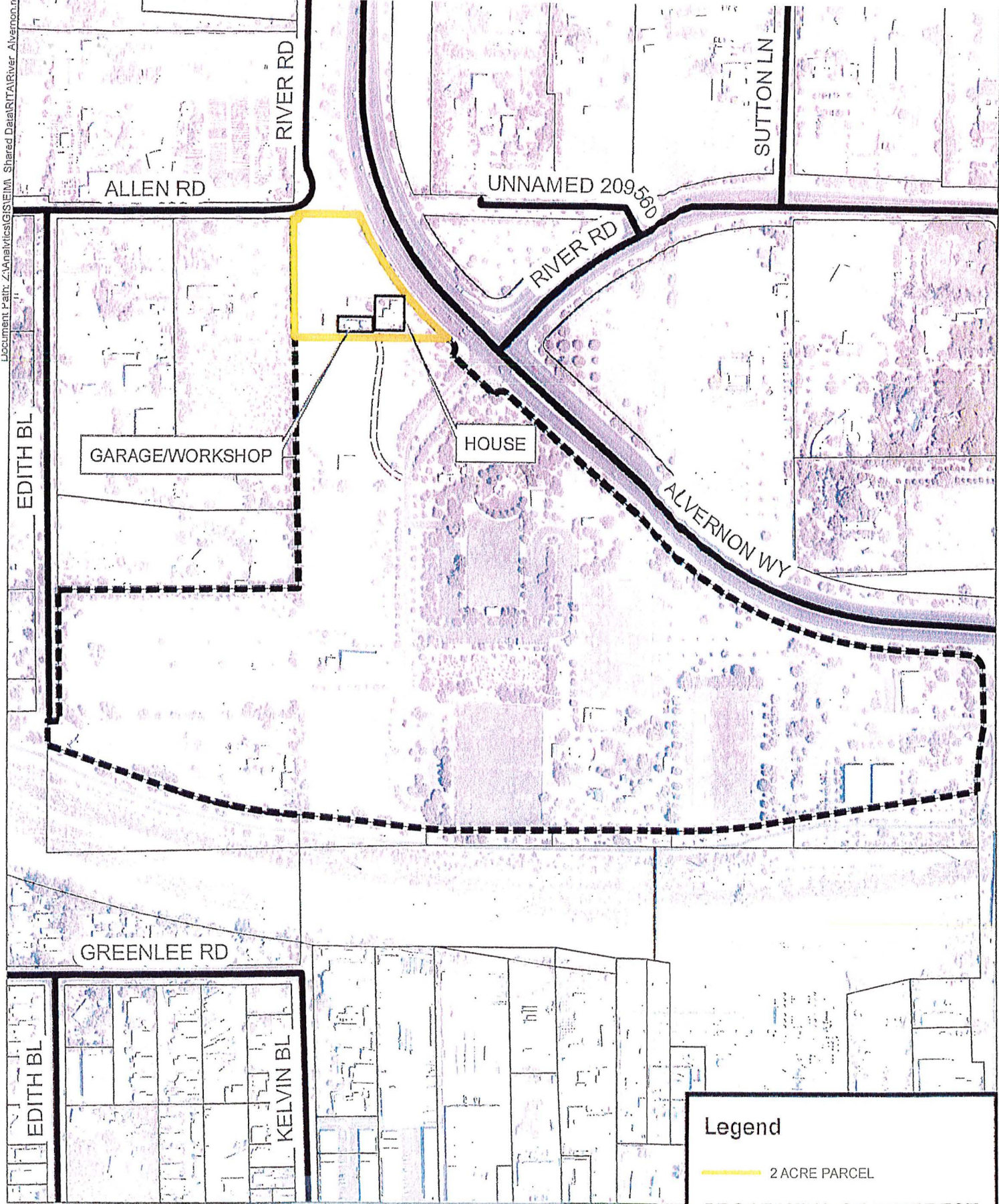
Telephone: 724-6462

Department Director Signature/Date: _____

Deputy County Administrator Signature/Date: _____

County Administrator Signature/Date: _____

(Required for Board Agenda/Addendum Items)



LOCATION MAP

3420 E. RIVER RD
SECTION 28, TOWNSHIP 13E, RANGE 14E

Legend

— 2 ACRE PARCEL

PROPERTIES OF INTEREST

PARCEL

11101032F



REAL PROPERTY

CONTRACT	
NO. <u>CTN-PW-20-056</u>	
AMENDMENT NO. _____	
This number must appear on all invoices, correspondence and documents pertaining to this contract.	

LEASE TO SCULPTURE TUCSON. ORG., INC, A NONPROFIT CORPORATION

1. **Parties.** This lease ("**Lease**") is entered into by and between PIMA COUNTY, a body politic and corporate of the State of Arizona ("**County**"), and Sculpture Tucson.org., Inc., an Arizona nonprofit corporation (hereinafter "**Tenant**"). This Lease shall be effective (the "**Effective Date**") on the date it is fully executed by County and Tenant.

2. **Background & Purpose.**

2.1. County owns the real property described on **Exhibit A** and depicted on **Exhibit A-1** attached hereto (the "**Property**"). The address for the Property is 3420 E. River Road, Tucson, Arizona 85749. The Property contains improvements which include a 1,654 sq. ft. main building (the "**Building**"), and a 1,226 sq. ft. garage/workshop (the "**Garage**").

2.2. Tenant works with local community partners, government entities, and art and business organizations to help artists connect to resources, and creates hands-on art education programs free to the public.

2.3. Tenant wants to make significant improvements to the Property, which may include a new heating and cooling unit, replace portions of steel roof on the garage/workshop, and interior work to the residence.

2.4. County has the authority under A.R.S. §11-256.01 to lease real property to a nonprofit corporation at less than fair market value. County previously published notice of its intent to enter into this Lease as required by law. County desires that Tenant to use the Property, and to maintain and improve the Property.

3. **Lease of Property; Access.**

3.1. **Lease.** County hereby leases the Property to Tenant, and Tenant hereby leases the Property from County, under the terms and conditions and for the purposes set forth herein.

3.2. **Access.** The Property is located within the County's Brandi Fenton Memorial Park, 3482 E. River Road, Tucson AZ 85745 (the "**Park**"). County will provide access as shown in **Exhibit "B"**. This Lease does not provide access to any other location within the Park. Access will be through a gate that is accessible to County and Tenant, using either daisy chain locks, a combination lock, an electronic gate, or similar locking

mechanism.

4. **Term.** The term of this Lease shall commence on the Effective Date and shall terminate 3 years after the Effective Date (the "**Initial Term**").

5. **Possession.** From and after the Effective Date, Tenant will have possession of the Property.

6. **Rent; Utilities.** Tenant shall pay as rent to County the sum of One Hundred DOLLARS (\$100.00) per month payable on the 1st of each month. Tenant will pay all utility costs associated with the Property.

7. **Non-Profit Status.**

7.1. Tenant will at all times during the term of this Lease be a non-profit organization exempt from taxation under the United States Internal Revenue Code (26 USC § 501(c)(3)). Tenant will provide County a copy of Tenant's letter of exemption from the Internal Revenue Service granting Tenant such tax exempt status and any analogous ruling from the Arizona Department of Revenue. Tenant will notify County in writing and provide County with a copy of any ruling or inquiry from any governmental authority affecting or potentially affecting such status.

7.2. Because this Lease is a lease to a non-profit entity, Tenant agrees that any compensation paid by Tenant to its members, officers, employees, or any related entity, will be reasonable, not excessive, compensation for a non-profit entity. County will have the right to inspect Tenant's records to verify the levels of compensation paid by Tenant. If County reasonably determines that such compensation is excessive, County may terminate this Lease unless Tenant adjusts its compensation to reasonable levels within sixty (60) days of receiving notice from County of its objection to Tenant's compensation levels.

8. **Tenant's Obligations.** Tenant will comply with the following obligations during the term of this Lease:

8.1. Permitted Activities. Tenant will provide programs consistent with its current operation as an artist resource center. All Permitted Activities will be conducted on the Property, including parking; except that parking outside the Property for Special Events, as described in section 8.8, will be allowed by obtaining a special events permit.

8.2. Furnishings and Equipment. Tenant will provide all furnishings and equipment necessary to establish a functional and effective artist's resource center to create hands-on art education programs free to the public.

8.3 Resource Protection. Tenant agrees to:

8.3.1 Discharge no waste or byproducts or materials onto any property nor into

any water channels that might possibly result in harm to human water supplies;

8.3.2 Take all reasonable measures to protect the scenic, aesthetic values of the area; prevent soil erosion and gullying that might be caused by construction or improper utilization of resources; and discourage vandalism or disorderly conduct, including the calling in of appropriate law enforcement officers when necessary and assisting in subsequent prosecution;

8.3.3 Take appropriate action to prevent fire damage to improvements and natural resources by complying with all applicable codes imposed by state, city or county laws, ordinances or regulations, including applicable building and electrical codes, and making available as needed spark arresters and fire extinguishers.

8.4 Compliance with Laws. Tenant will 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 Property.

8.5 Signage. Tenant will instruct its members, invitees and guests to enter the Property by traversing through Brandi Fenton Park from River Road directly southerly to the entrance to the Property. Any and all signs placed by Tenant on the Property will be immediately removed by Tenant upon termination of this Lease for any reason, and any damage resulting from such removal shall be repaired immediately by Tenant at its sole cost. Tenant shall pay all costs for construction, erection, installation, maintenance, and repair of any sign either currently in existence or to be erected or installed or otherwise placed on the Property. All signs will comply with all applicable sign codes and ordinances.

8.6 Improvements. Tenant will construct the improvements as shown in **Exhibit "C"** (the "Improvements"). The Improvements have been approved by NRPR to be constructed and inspected within the first 12 months of the lease.

8.7 Traffic. Tenant will take reasonable steps to insure that no traffic moves on the Property in excess of 10 miles per hour and will make all reasonable attempts to mitigate dust caused by the use of the Property.

8.8 Special Events.

8.8.1 *Defined.* For purposes of this Agreement, a "**Special Event**" on the Property is an event which is beyond the normal scope of the operation of the Property, including any event which (i) is open to the general public; or (ii) is designed to attract larger numbers of people; or (iii) involves a cash bar or other sales of alcohol; or (iv) may increase risk of injury to persons at the Property. Special Events do not include routine meetings and functions.

8.8.2 *Notice of Special Event.* Should Tenant desire to conduct a Special Event on the Property, Tenant shall give Pima County Natural Resources Parks and

Recreation ("**NRPR**") special events program manager, Martina Gonzales a thirty (30) day advance written request, with a description of the Special Event, together with proposed dates and times of event operation, and the name, phone and email address of a single contact person, with whom NRPR may coordinate the event proposal. NRPR will promptly respond to Tenant with additional questions, approval, denial, or proposed modifications to the event. NRPR may designate approved parking areas for Special Events.

8.9 Special Events or other uses of the Park. Tenant shall follow any and all standard processes developed by NRPR in the event that Tenant desires to utilize any part of the Park for a special event, placement of Tenant's sculptures, or any other use or modification of the Park.

8.10 Serving of Liquor. Tenant may not serve liquor on the Property unless it is in conjunction with an approved Special Event, per Section 8.8 or 8.9, and Tenant has liquor liability insurance in compliance with section 15.

8.11 Expenses of Tenant. Tenant will conduct all of its operations on the Property at its own expense and without contribution from County. Tenant will not suggest, state, or imply that County will participate, guarantee or otherwise assist in any financial obligation undertaken by Tenant with respect to its operations on the Property.

9 Prohibited Activities

9.1 Use of Property. Tenant will not use the Property for any purpose nor engage in or permit any other business activity on the Property except as expressly permitted by this Lease.

9.2 Third Party Contract. Tenant may not contract with a third party to conduct the Permitted Activities without County's prior written consent, which shall be at County's sole discretion. Any such contractor must be a non-profit, tax-exempt organization and must comply with all provisions of this Lease. County's consent to a third party contract shall not relieve Tenant of any of its obligations, responsibilities, or liabilities hereunder, and Tenant agrees that it shall be fully liable for, and hereby agrees to indemnify County from and against any liability, losses, or expenses suffered or incurred by County as a result of Tenant's contractor's operations on the Property.

9.3 Outside speakers. No outside loud speakers will be installed or used from which sound travels beyond the boundaries of the Property.

9.4 No Commercial or Residential Use. Except for the Permitted Activities, Tenant will allow no commercial or residential use of the Property or use by any other person or organization without the County's consent.

9.5 Lighting. Tenant may not install any lighting which intrudes on the existing lifestyle and land use of surrounding residential neighborhoods, except as reasonably

necessary for the safe use of and security of the Property and improvements thereon. Any additional lighting installation must comply with section 10, and may be constructed only after notification of the specific intent and submission of specific plans for additional lighting to County and to surrounding neighborhood groups for comment.

10 Alterations and Improvements to Property.

10.1 Consent Required. Tenant may not make any improvements, alterations, additions, or changes to the Property (collectively the "**Alterations**") without complying with all of the provisions of this section 10.

10.2 NRPR Consent. Except for the heating and cooling unit, replace portions of steel roof on garage/work shop, flooring, painting, bathroom toilets that have been approved by NRPR, Tenant may not make any Alterations without obtaining prior written consent from the NRPR Director or designee. Tenant must obtain NRPR approval before proceeding to comply with the remainder of this section 10. Tenant may construct an electric gate provided that NRPR has approved the plans. If tenant installs an electric gate, tenant will provide gate code to Landlord for access to Landlord's property.

10.3 Plan Review. All improvements will be subject to the County's Development Plan review process. All improvements must comply with all applicable Pima County building codes.

10.4 Plan and Specifications. Tenant shall provide NRPR and Pima County Real Property Services ("RPS") with plans and specifications developed by an Arizona registered architect or engineer (the "**Notice of Alternations**") for review prior to initiating any work. NRPR and RPS will have forty-five (45) days after receipt of the Notice of Alternations to approve or reject the proposed Alterations. Failure to respond to the Notice of Alternations within forty-five (45) days after receipt of the Notice of Alternations shall be deemed approval.

10.5 Consent Withheld. County will not unreasonably withhold consent to proposed Alterations; provided, however, it shall be reasonable for County to withhold consent if, among other reasons, the Alterations:

10.5.1 Adversely affect the integrity of any structural, mechanical, or electrical system of any portion of the Property or affect the integrity of the Property or the Property features or its infrastructure;

10.5.2 Result in County being required to perform any work that County could otherwise avoid or defer;

10.5.3 Result in an increase in the premiums for any hazard or liability insurance carried by County or result in an increased risk of liability or pose a safety hazard; or

10.5.4 Result in an increase in the demand for utilities or services (including wastewater treatment) that County provides to the Property.

10.6 No County or District Liability for Approval of Alterations. County's review of the plans and specifications shall be solely for County's purposes and shall not imply that County have reviewed the plans and specifications for quality, design, laws, compliance or other like matters. Accordingly, notwithstanding that any construction drawings are reviewed by any County architects, engineers, or consultants, County will have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in any construction drawings, and Tenant's indemnity set forth in the Indemnification Clause of this Lease shall specifically apply to the construction drawings. County's review shall be to determine that the proposed Alterations are consistent with the purposes of this Lease.

10.7 Construction of Improvements.

10.7.1 *Compliance with Law.* All improvements shall comply with all applicable federal, state and local statutes, codes, ordinances, rules and regulations, including but not limited to floodway and floodplain laws and regulations.

10.7.2 *Indemnification.* All construction contracts shall include an indemnification provision requiring the contractor to indemnify, defend and hold harmless County from all losses, claims, suits, demands, expenses, attorney's fees or actions of any kind or nature arising from contractor's negligent or intentional acts, errors or omissions.

10.7.3 *Insurance.* Tenant shall cause said contractors to obtain insurance coverage of a type and amount acceptable to County and to name Tenant and County as additional insureds with respect to liability arising out of the performance of said contracts. Within thirty (30) days after completion of any buildings or improvements, Tenant shall deliver to County a complete and reproducible set of the plans and specifications of the improvement or buildings as built.

10.8 Indemnification by Tenant. Tenant shall indemnify, hold County harmless, and defend County against liability for any damage to property or injury to persons occasioned by any construction by Tenant at the Property.

10.9 Property of County. All improvements placed upon the Property shall become the property of County at the time they are placed thereon, and shall be surrendered to County upon the termination of this Lease, free and clear of all liens and encumbrances of every kind, and in good and operable condition, excluding reasonable wear and tear.

10.10 Reimbursement by County for Breach. In the event of a termination of this Lease by Tenant as a result of a material breach by County, County will compensate Tenant for improvements made by Tenant in compliance with this section 10 in an amount

equal to (i) the total cost of the improvements as evidenced by invoices to Tenant, less (ii) depreciation in an amount equal to straight line depreciation over the life of the improvement through the termination date. Such compensation will be paid by County within ninety (90) days after termination, receipt of invoices evidencing the cost of improvements, and Tenant having vacated the Property.

11 Maintenance & Repairs.

11.1 Maintenance and Repairs by Tenant. Except as provided in section 11.2, Tenant will at all times maintain the Property in a good, clean, safe and sanitary condition, at its sole cost and expense, including making any necessary repairs or replacements of improvements thereon, including doors, windows, interior fixtures, appliances, furnishings, and building systems, including the furnace and air conditioning system, and landscaping on the Property. If tenant chooses to install electronic gate then tenant is responsible for all maintenance and repairs.

11.2 Landlord Repairs. Landlord will maintain and repair the exterior portion of the Building, including the roof, exterior walls, sewer, water and electrical lines outside of the Building, and landscaping outside the Property.

11.3 Tenant Failure to Maintain. If Tenant fails, after 30 days written notice, to comply, or to take reasonable steps towards compliance with section 11.1 if compliance would take more than 30 days, County may, but are not required to, make such repairs as they deem necessary and Tenant will reimburse the costs of such repairs on demand.

12 Environmental.

12.1 Hazardous Material. 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) defined as a "hazardous waste" under NRS 459.400 *et seq.*, (ii) petroleum, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.* (42 U.S.C. 6903), (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* (42 U.S.C. 9601) or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. 6991 *et seq.*

12.2 Hazardous Materials Prohibited; Clean Air Act. Tenant shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Property by Tenant, its agents, employees, contractors or invitees, without the prior written consent of County, other than such Hazardous Materials which are necessary or useful to Tenant'

business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Materials. Tenant' operations on the Property shall comply with applicable provisions of the Clean Air Act, 42 U.S.C. 7401 *et seq.* and Arizona Revised Statutes, Title 49, Chapter 3.

12.3 Indemnity. In the event an Environmental Act occurs, Tenant shall indemnify, protect, defend and hold County harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities or losses (including, without limitation, diminution in value of the Property or any part thereof, damages for the loss or restriction on use of usable space or of any amenity of the Property or any part thereof, damages arising from any adverse impact on marketing of space with respect to the Property 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 Agreement as a result of such contamination. The foregoing obligation of Tenant to indemnify, protect, defend and hold County 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 Property or the soil or ground water on, under or adjacent to the Property, or elsewhere in connection with the transportation by Tenant of Hazardous Material to or from the Property. For purposes of this section 12.3, an Environmental Act shall mean:

12.3.1 Tenant breaches the obligations stated in Section 12.2;

12.3.2 the presence (whether consented to by County or otherwise) of Hazardous Material on the Property or on or in the soil or ground water under or adjacent to the Property caused or permitted by Tenant, its agents, employees, contractors or invitees, results in contamination of the Property or such soil or ground water;

12.3.3 contamination of the Property or such soil or ground water by Hazardous Material otherwise occurs for which Tenant is legally liable to County for damage resulting therefrom; or

12.3.4 Contamination occurs elsewhere in connection with the transportation by Tenant of Hazardous Material to or from the Property.

12.4 Clean-Up. Without limiting the foregoing, if the presence of any Hazardous Material on or in the Property, soil or ground water under or adjacent to the Property caused or permitted by Tenant, or its agents, employees, contractors or invitees results in any suspected contamination of the Property, soil or ground water under or adjacent to the Property, Tenant shall promptly notify County in writing and take all actions, at Tenant's sole cost and expense, as are necessary to return the Property, soil or ground water to the condition existing prior to the introduction of any such Hazardous Material to the Property, soil or ground water; provided that County's approval of such actions shall

first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Property.

12.5 Pre-existing Contamination. County agrees that any Hazardous Materials contaminating the Property prior to possession of the Property by Tenant shall not result in liability for Tenant under this Section 12 except to the extent such contamination is aggravated by the action or inaction of Tenant.

12.6 Notices Regarding Environmental Conditions. Tenant shall, within ten (10) business days following receipt thereof, provide County 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 Property 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 Property or the soil or ground water under or adjacent to the Property 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 Property or the soil or ground water under or adjacent to the Property or any damages caused by such release.

12.7 Survival. Tenant's and County's obligations under this Section 12 shall survive the expiration or earlier termination of this Agreement and vacation of the Property.

13 Entry by County. County reserve the right to enter upon the Property at reasonable times to inspect, make repairs, or for any other reason deemed necessary. County will provide Tenant with reasonable notice of their intent to enter upon the Property.

14 Security. Tenant shall be responsible for the securing the Property and preventing any unlawful or unauthorized use thereof. Tenant shall contact law enforcement authorities when it appears necessary to protect the Property and any persons or property thereon, and it shall assist in any resulting prosecution.

15 Insurance.

15.1 Coverage. Tenant shall maintain at its expense the following insurance during the term of this Lease:

15.1.1 Commercial General Liability. Coverage shall be at least as broad as ISO form CG 00 01 in an amount not less than \$2,000,000.00, covering the Property, endorsed to include Pima County as an additional insured with coverage at least as broad as ISO form CG 20 10.

15.1.2 *Commercial General Automobile Liability.* Coverage shall be at least as broad as ISO form CA 00 01 in an amount not less than \$1,000,000.00 for vehicles actually used in the operations at the Property (as compared to use for simple commuting).

15.1.3 *Workers' Compensation.* Statutory limits, with Employers' Liability coverage in an amount not less than \$1,000,000.00 per injury, illness, or disease.

15.1.4 *Commercial Property.* Extended coverage against loss or damage by fire or other casualty including earthquake and flood damage, covering the full replacement cost of real property, including tenant improvements, and personal property located on the Property, endorsed to County as an additional insured.

15.1.5 *Liquor Liability.* Liquor liability if alcohol is being served on the Property in an amount not less than \$5,000,000.00 per occurrence, endorsed to include Pima County as an additional insured.

15.1.6 *Special Events.* Special Events insurance in an amount acceptable to the County Risk Manager for any event held on the Property not covered by other insurance provided as required above.

15.2 Injury Reports. By the 15th of each month, Tenant shall provide to County a report listing any incident involving injury to persons or damage to property occurring at the Property. If any such injury to persons requires emergency medical treatment, Tenant shall contact County within one (1) business day of such incident. County will have the right to investigate any incident involving injury to persons or property occurring at the Property and Tenant shall provide County with all information available to Tenant about such incident.

15.3 Insurance Certificates. Tenant shall provide County with current certificates of insurance at least annually which shall show County as an additional insured. All certificates of insurance must provide for guaranteed thirty (30) days written notice of cancellation, non-renewal or material change.

15.4 Waiver of Subrogation. Each party waives its claims and subrogation rights against the other for losses typically covered by property insurance coverage.

15.5 Changes to Insurance Requirements. County retains the right to reasonably increase the limits or types of coverage from time to time as determined in the best interests of County by Pima County Risk Management.

16 **Damage or Destruction.**

16.1 Casualty not Rendering Property Unusable. In the event any portion of the Property is damaged by fire or other perils (by any cause whatsoever) not rendering the

Property untenable, Tenant will repair and restore the Property to the condition in which it existed prior to the casualty, using the insurance proceeds. All such repairs will comply with section 10 of this Lease, to the extent they constitute Alterations. Tenant's obligation to restore the Property is limited to the proceeds of insurance.

16.2 Casualty Rendering Property Untenable. In case of the total destruction of a building or structure on the Property by any cause whatsoever, or in case of such partial destruction thereof as to render the building or structure unfit for Tenant's occupancy, then in any such event any insurance proceeds will be spent to improve the Property in a manner agreed to by Tenant, County and District, and any improvements that constitute Alterations must comply with section 10 of this Lease.

17 Indemnification.

17.1 To the fullest extent permitted by law, Tenant shall defend, indemnify, and hold harmless County, their officers, agents, and employees, from and against any and all claims, liabilities, losses, damage, cost and expense, including but not limited to reasonable attorney's fees and/or litigation expenses, arising out of or resulting from the conduct or management of the Property, or any accident, injury, damage, or violation of law whatsoever occurring in or at the Property, directly or indirectly caused in whole or in part by any act or omission of Tenant or anyone directly or indirectly employed by it, its agents, representatives, contractors, subcontractors, licensees, or anyone for whose acts it may be liable, except that the indemnity will not be applicable if arising solely from any negligent act or omission of County or any of their officers, agents, or employees. This agreement to defend, indemnify and hold harmless will survive the expiration of the termination of this Lease.

17.2 Tenant acknowledges and understands that the Property is located in the Brandi Fenton Park, and the park is open to the public. Tenant holds County, and their officers, employees, and agents, harmless from any claim, damages, liability or expense suffered or incurred in connection with any use of the Property by Tenant, its invitees or guests, as a consequence of the Property being located within the park.

18 **Tenant Not an Agent of County.** Tenant is not an agent of County for any purpose under this Lease or otherwise. Tenant shall control activities on the Property, and County shall not control those activities. Tenant's employees and servants shall not be under the control of County.

19 Notices.

19.1 Writing. All notices required or permitted to be given hereunder must be in writing and mailed by first class, registered, certified or overnight mail, return receipt requested, postage prepaid, or transmitted by electronic mail, facsimile, or hand delivered, addressed to County's or Tenant's address.

19.2 Receipt. If mailed, all such notices, demands, requests, or other

communications are deemed received upon the expiration of seventy-two (72) hours after deposit in the U.S. mail as aforesaid. Notice served personally or by electronic mail or facsimile is deemed served upon delivery thereof to the addressee. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given is deemed to be receipt of the notice, demand or request sent. Any party entitled to notices hereunder may from time to time designate to the other parties, in writing and given in accordance with this Section, a different address for service of notice.

19.3 Any notices required hereunder shall be directed as follows:

NRPR:

Director, Natural Resources, Parks and Recreation
3500 W. River Road
Tucson, AZ 85741
Phone: (520) 724-5000

County

Manager, Real Property Services
201 N. Stone Ave., 6th floor
Tucson, Arizona 85702
Phone: (520) 724-6582

If to Tenant:

Sculpture Tucson.Org. Inc.
Barbara Grygutis
3420 E. River Road
Tucson, AZ 85741
Phone: 520-907-9443,

20 **Conflict of Interest.** This Lease is subject to cancellation within three (3) years after its execution pursuant to A.R.S. §38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Lease on behalf of County is, at any time while this Lease or any extension of the Lease is in effect, an employee or agent of any other party to the Lease with respect to the subject matter of the Lease.

21 **Non-Discrimination.** Tenant agrees that 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. Tenant shall comply with the provisions of Arizona Executive Order 75-5, as amended by Executive Order 99-4 and 2009-09 issued by the Governor of the State of Arizona, which is incorporated into this Lease as if set forth in full herein.

22 **Default/Termination.**

22.1 Termination by County Without Notice. This Lease may be terminated

immediately by County for any of the following:

- 22.1.1 failure of Tenant to carry the required insurance;
- 22.1.2 loss by Tenant of its tax-exempt status or an action by the IRS challenging that status;
- 22.1.3 violation of any law by Tenant, or any unlawful activities carried out on the Property;
- 22.1.4 any action or omission by Tenant that, in County's sole judgment, causes a threat to the health or safety of the general public or the users of the facility;
- 22.1.5 any actions or omissions by Tenant that unduly interfere with activities of County, or which unduly disturb the quiet enjoyment of neighboring property owners/occupants;
- 22.1.6 Tenant creates or permits any waste or nuisance on the Property;
- 22.1.7 Tenant commits three (3) defaults in a twelve (12) month period, regardless of whether or not Tenant timely cured such defaults as provided below;
- 22.1.8 Tenant permits the consumption of alcohol on the Property without County's approval and insurance; or
- 22.1.9 Any other activity or omission that in County's reasonable judgment is not a condition subject to "cure".

22.2 Breach and Opportunity to Cure. Either party may present written notice of default or non-performance to the other party. For any default other than those listed in section 22.1, the non-breaching party may terminate the Lease only if the breaching party fails to cure the default within thirty (30) days of receiving the notice from the non-breaching party, unless the failure is of such a character as to require more than thirty (30) days to cure, in which event the breaching party will be in default only if it fails to initiate the cure within thirty (30) days, and thereafter diligently pursue the same to completion.

22.3 Other Remedies. Both parties may pursue any other remedies provided by law for the breach of this Lease. No right or remedy conferred or reserved is intended to be exclusive of any other right or remedy, and each shall be cumulative and in addition to any other right or remedy conferred or reserved in this Lease.

23 **Consent of County.** Except as otherwise provided in this Lease, wherever the consent of County is required in this Lease, the consent may be given in writing by the County Administrator, or a department Director to whom he has delegated his authority, provided that any modification to this Lease requires approval of the County Board of

Supervisors.

24 **Personal Property.** Tenant shall maintain a current inventory of all items of personal property owned by Tenant and placed or kept on the Property by Tenant. Any items of personal property left on the Property upon expiration or earlier termination of this Lease shall become the property of County and may be sold or otherwise disposed of by County without liability to Tenant.

25 **Liens.** Tenant shall timely pay all contractors, subcontractors, mechanics, laborers, or materialmen providing materials or services with respect to the Property, and shall not permit any lien to attach to the Property or any interest therein, and shall indemnify and defend County against all legal costs and charges resulting from any such lien.

26 **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, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future.

27 **Assignment/Subletting.** Any attempted assignment of this Lease by Tenant without prior written consent from County's Board of Supervisors shall be void. This Lease shall be binding on any and all successors and permitted assigns. Tenant shall not sublet any portion of the Property without the prior written consent of County, which consent shall be at County's sole discretion.

28 **Entire Agreement.** This Lease shall constitute the entire contract between County, and Tenant with respect to the Property and no modification hereof shall be binding unless in writing and signed by all parties.

29 **Exhibits.** The following exhibits to this Lease are fully incorporated herein as if set forth at length:

<u>Exhibit A</u>	Description of the Property
<u>Exhibit A-1</u>	Depiction of the Property
<u>Exhibit-B</u>	Access
<u>Exhibit-C</u>	Estimates

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

TENANT: Sculpture Tucson.org. Inc.

By: Garth Hughes + [Signature]

8.29.19
Date

Its: President Treasurer

COUNTY: PIMA COUNTY, a body politic and corporate of the State of Arizona:

Richard Elias, Chairman, Board of Supervisors

Date

ATTEST:

Julie Castaneda, Clerk of Board

Date

APPROVED AS TO CONTENT

[Signature]

9/20/19

Carmine DeBonis
Deputy County Administrator-Public Works

[Signature]

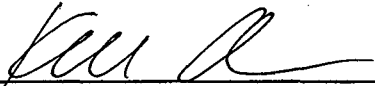
Neil J. Konigsberg, Manager Real Property Services

APPROVED AS TO CONTENT:

By [Signature]

Chris Cawein, Director, Natural Resources, Parks and Recreation

APPROVED AS TO FORM:

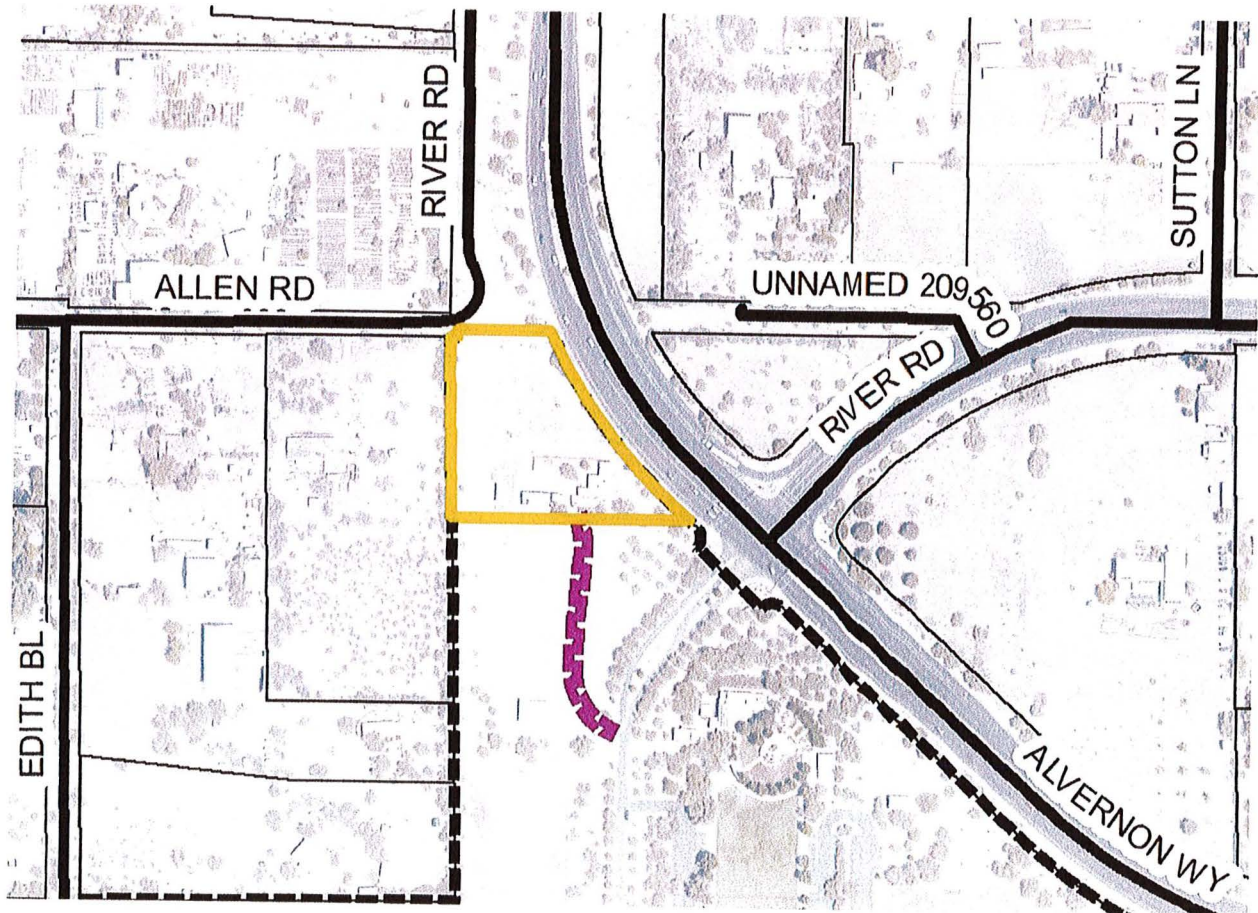
A handwritten signature in black ink, appearing to read 'Kell Olson', written over a horizontal line.

Kell Olson, Deputy County Attorney, Civil Division

EXHIBIT "A"

A portion of tax parcel 111-01-032f, a 2 acre parcel in Section 28, Township 13 East Range 14 West

AERIAL PHOTO



— Subject Boundary Lines (Encompassing 2 Acres Approximate). Note: no survey has been conducted to determine the exact boundary lines of what would constitute 2 acres. The above depiction is based on GIS mapping measurements and are an approximation only.



EXHIBIT "A-1"

3420 E. RIVER RD
SECTION 28, TOWNSHIP 13E, RANGE 14E

Legend

— 2 ACRE PARCEL

PROPERTIES OF INTEREST

PARCEL

11101032F

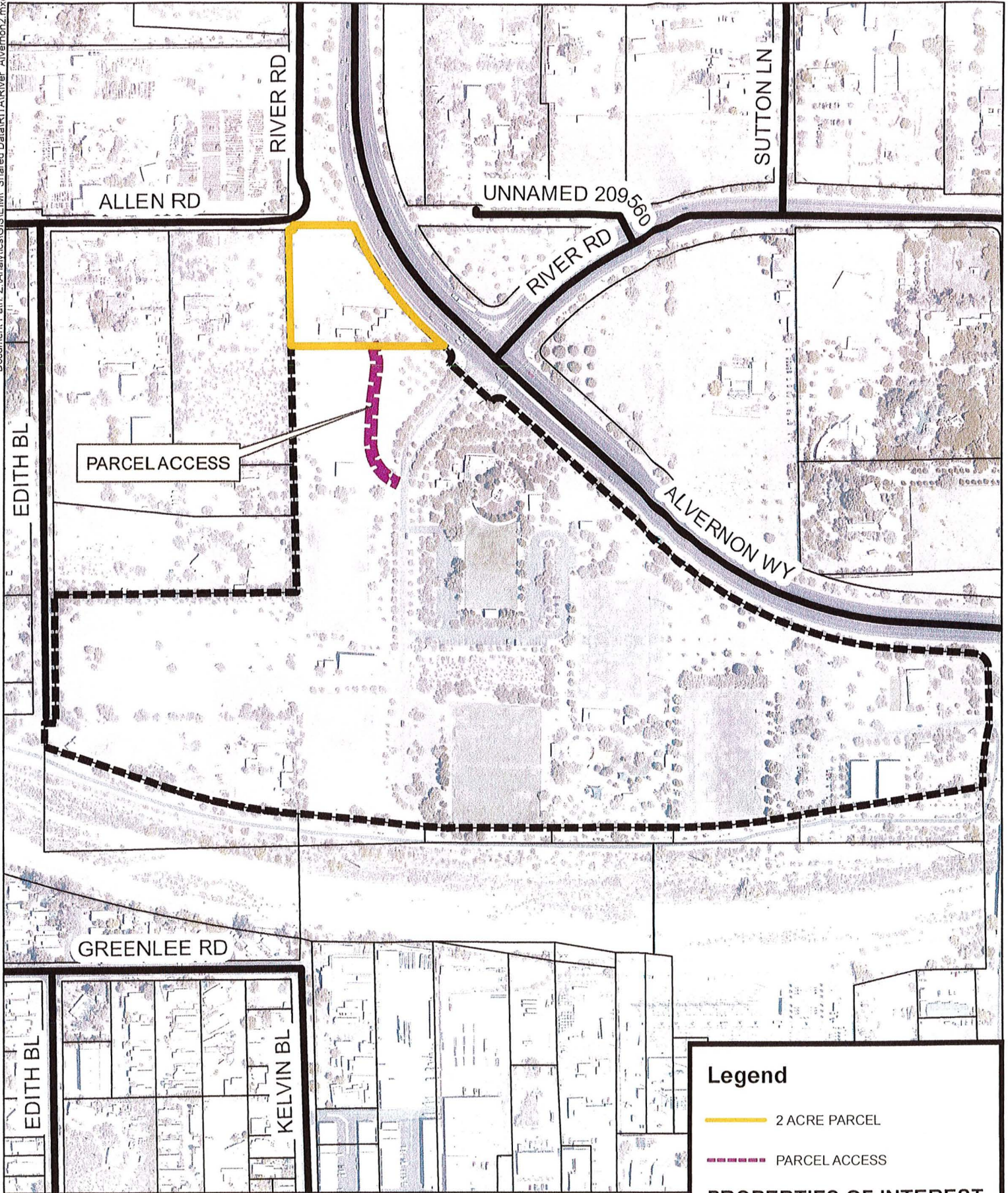




EXHIBIT "B"

3420 E. RIVER RD
SECTION 28, TOWNSHIP 13E, RANGE 14E

Legend

 2 ACRE PARCEL

 PARCEL ACCESS

PROPERTIES OF INTEREST

PARCEL


 11101032F

EXHIBIT "C" PROPOSAL

B & J REFRIGERATION, INC.

422 S. Olsen Avenue
Tucson, Arizona 85719-6337

PLEASE INDICATE THE FOLLOWING NUMBER WHEN ORDERING

(520) 326-9672 Fax (520) 622-0953
ROC 104645 / 105179

#61870

Sculpture Tucson – C/O Barbara Grygutis
3428 E River Rd
Tucson AZ 85718
520-907-9443 barbara@barbaragrygutis.com

DATE:
2/22/19

SALESPERSON:
Lawrence Bair
520-336-7157

TERMS:
½ down remainder due upon completion

RE: Heating & cooling upgrades (14 SEER)

Quantity	Description	Amount
1	American standard 4YCC4060A1090A 5 ton, 14 SEER, single stage gas package unit.	
1	Duct package: 26 ga. galv. iron with 2" liner to tap into existing ductwork	
1	American Standard ACONT824AS52DA touch pad programmable Wi-Fi thermostat.	
1	Removal of existing furnace from closet, condensate ran to grade,	
1	Installation of new package unit on roof. (Will need to consult a structural engineer)	
1	Gas line ran to new unit and electrical ran from panel to new unit.	
1	Installation of a two head mini-split for the two back rooms 1-AOU18RLXFZ & 2- ASU9RLF1 condenser and two mini-split heads. (Per Manual J I had to add additional cooling, being a 5 ton is the largest unit in a residential platform).	
1	New return to be located in living room, unit to sit on curb.	
1	Permit and crane lift. Remove both coolers. Ductwork ran across roof.	
1	Misc. package: Freon recovery to EPA specs, gas piping from existing to new unit, condensate to existing, misc. copper, crane, fittings, new whips/fuses, power cord, caulk, tapes, sealants, small parts, crane, unit disposal, worksite cleanup, etc.	

Complete installation of above with B&J 2 year labor warranty
American Standard 10yr parts & 10yr compressor

Total \$ 14,925.21

EXCLUSIONS: Any required design. Structural engineer

Only manufacturer's warranties apply to all products

NOTICE: PROPERTY OWNER HAS THE RIGHT TO FILE A WRITTEN COMPLAINT WITH THE REGISTRAR OF CONTRACTORS FOR AN ALLEGED VIOLATION OF A.R.S. SECTION 32-1154, SUBSECTION A. COMPLAINTS MUST BE MADE WITHIN THE APPLICABLE TIME PERIOD AS SET FORTH IN A.R.S. SECTION 32-1155, SUBSECTION A. ROC's website www.azroc.gov and phone number (602)542-1525

Signing of this quotation constitutes a contract. Past due accounts are subject to a service charge of 1½% per month, 18% per annum. All collection and legal expenses are paid by the purchaser when past due invoices are submitted for collection through agency, attorney, or court.

We are pleased to submit the above quotation for your consideration. Should you place an order, be assured it will receive our prompt attention. This quotation is subject to the above conditions and is valid for 30 days. Thereafter it is subject to change without notice.

By

Lawrence Bair

Accepted

Date

Visit our website at www.bjrefrigeration.com

Visa and MasterCard accepted

PLEASE SIGN AND RETURN A COPY; keep a copy for your records.

Thank you



EXHIBIT "C"

February 8, 2019

To: Barbara Grygutis
Job Address: 3420 E. River Rd
Tucson, AZ 85718

The Paint Kings, Inc. shall furnish all materials, labor, and equipment for the proper painting, and finishing of all surfaces. Bid is based on one finish/top coat unless otherwise listed below. Bid is broken down as follows:

Paint interior walls/ceiling/doors/trim/closets of home complete. Bid is based on:

- *Mask off all floors and adjacent surfaces as needed
- *Patch/Repair nail holes/cracks on surfaces as needed
- *Paint all surfaces Dunn Edwards Spartawall Swiss Coffee (Velvet Sheen)
- *Paint Kings is not responsible for damage to blinds upon removal or installation
- *Exclude all raw wood surfaces

Base Price: \$2,900.00

10% off if scheduled & completed within 30 days

All of the above work to be completed in a substantial and workmanlike manner according to the standard Practices for the sum of: Two Thousand Nine Hundred Dollars/NO Cents

Payments* to be made: 40% Deposit (\$1,160.00)
*MasterCard/Visa/AMEX Accepted. Balance Due On Completion (\$1,740.00)

Any alteration of deviation from the above specifications involving extra cost of material or labor will only be executed upon written orders for same, and will become an extra charge over the sum mentioned in this contract. All agreements must be in writing.

Respectfully submitted:

By: Trea Smith

ACCEPTANCE

We are hereby authorized to furnish all materials and labor required to complete the work mentioned in the above proposal, for which Property Owner agrees to pay the amount mentioned in said proposal, and according to the terms thereof. Bid good for 90 days from date on bid. Any unpaid amount after the day of completion may be subject to 1.5% interest per month until balance is paid in full. All applicable advertising discounts are already included in the total price above and will not be altered after the start of the job. *Note: We are no longer doing business with NU Card and therefore can no longer honor the Discount card that is being mailed to New Home Buyers. We do Apologize for the inconvenience.

Accepted: _____

Date: _____

Disclaimers

The property owner has the right to file a written complaint with the Arizona Registrar of Contractors for an alleged violation of section 32-1154, subsection A. Any complaints must be made within the applicable time period as set forth in section 32-1155, subsection A. The ROC can be contacted at (602) 542-1525 or online at <http://www.azroc.gov/>. We request that if any portion of our work is unsatisfactory that you notify us prior to filing a complaint so we can attempt to resolve any concerns.

TUCSON

2004 E. 17th Street • Tucson, AZ 85719
520.322.5181

CHANDLER

7400 W. Detroit Street, Suite 120 • Chandler, AZ 85226
480.393.3092

Licensed – Bonded – Insured
ROC 122851 L-34

EXHIBIT C



Paint Kings are approved colors and Paint Kings is not responsible if they do not match HOA approved colors or homeowner's selection. Paint Kings recommends homeowners supply Paint Kings with all colors, including manufacturer and color number. Residential & Commercial.

Tucson Phoenix

Repairs to painted surfaces may cause a variance in texture. Due to a wide variety of substrates, finishes and textures, it may not be possible for Paint Kings to match your existing texture. Patches on Dryvit or smooth stucco will have a variance in texture.

Paint Kings uses nonabrasive Painter's Masking Tape. Paint Kings makes every effort to protect unpainted surfaces using commercial masking equipment and products. Unpainted surfaces such as concrete, tile, cabinets or window frames may have their coatings scratch or peel when the tape is removed, especially if they are weathered/aged. Paint Kings is not responsible for any surface defects created by masking and unmasking in the painting process.

Electronics, breakables, furniture, and window coverings should be removed from work areas and stored by homeowner during the painting process. Transporting, maneuvering or removal/installation by Paint Kings may cause damage to the item or cause it to be contaminated by paint. Paint Kings is not liable to replace or 'clean like new' any items left in work areas. Stains are designed to have a semitransparent and non-uniform finish. Existing blemishes, dark spots or inconsistencies may be visible on the end product. Paint Kings does not refinish wood surfaces and cannot remove these defects prior to staining. Paint Kings will stain surfaces in their as-is condition.

Changes to paint products need to be in writing: Specifications written into contract supersedes emails or verbal communication. Contract must be updated to address any product or sheen changes. Changes made within 3 business days of the scheduled start of a job are at the discretion of the project manager and may require an additional fee to cover already ordered product.

Paint Kings Warranty does not cover peeling, blistering or cracking of paint, caused by the deterioration of the underlying substrate, failure of previous coatings or water intrusion. Paint Kings Warranty is 2 years from substantial completion based on the Workmanship Standards of the Arizona Registrar of Contractors and the PDCA.

Deposit and balance payments may be made over the phone, in person or by mail to our office in Tucson. Credit cards and personal checks are the preferred methods of payment. Deposit payments should be made no less than 3 business days prior to the scheduled start of the job. Balance payments should be paid on the date of substantial completion. If a credit card is on file with the office it will be used to pay the balance of the contract unless owner request otherwise prior to date of completion. All invoices and receipts will be mailed to the home of the person paying the invoice.

TUCSON

2004 E. 17th Street • Tucson, AZ 85719

520.322.5181

CHANDLER

7400 W. Detroit Street, Suite 120 • Chandler, AZ 85226

480.393.3092

Licensed — Bonded — Insured
ROC 122851 L-34

PROPOSAL

EXHIBIT "C"

R.O.C.#191670 L05/C05

Martins Rockworks

2036 N, Calle de Romy.

Tucson, AZ 85712

(520)977-0661

(520)682-8285

Date: 4/1/19

FLOOR GRIND, STAIN OR PAINT

Attn: BARBARA GRYGUTIS / BRANDI FENTON PARK / ARTS BUILDING

Description	Unit Price	Tot
1.) Concrete Grinding (sample area to be approved)	Lump Sum	\$3,800.00
2.) Concrete stain and/or paint	Lump Sum	\$1,300.00
3.) Option for concrete seal	Lump Sum	\$850.00

*Tax/5005 provided \$0.00 Non Profit

TOTAL:

THANK YOU FOR YOUR BUSINESS!

Joshua Martin

EXHIBIT "C"

Lazco Lath LLC

5145 S. Lavender Moon Way

Tucson, Arizona 85746

Phone (602) 692-6920

Estimate To:

Sculpture of Tucson

Estimate Number:

Estimate Date: 5-08-19

Description	Amount
<u>Property Address: 3420 E. River Rd.</u> <ul style="list-style-type: none">• Replace 3 sections of galvanized metal & Plywood sheeting on roof	TOTAL: \$2,670.00