

CITY OF TEMPE
REQUEST FOR COUNCIL ACTION

Council Meeting Date: 8/22/2013
Agenda Item: 5C3

ACTION: Introduce and hold the first public hearing to adopt an ordinance approving and authorizing the Mayor to execute a Lease Agreement with the Tempe Community Action Agency to establish a community garden at Clark Park. The second and final public hearing is scheduled for September 19, 2013. (Ordinance No. 2013.51)

FISCAL IMPACT: Funds in the amount of \$115,000 have been allocated in Fund 63, 6304999 for the demolition and preparation of the pool site.

RECOMMENDATION: Adopt Ordinance No. 2013.51.

BACKGROUND INFORMATION: The proposed community garden space is located at the current Clark Park pool site, 1730 S. Roosevelt Street. The pool at Clark Park has exceeded its useful life and is currently slated for design in the 2017/18 Capital Improvement Program budget. City staff conducted a public input process with Clark Park area residents to decide on an interim use of a community garden for the pool site. Tempe Community Action Agency (TCAA) has partnered with the neighborhood to establish the garden and is solely responsible for the costs, liabilities and maintenance of operating the garden and is not requesting city funding to assist with their efforts. TCAA will provide insurance coverage and will indemnify the City for all damages associated with its use of the space at Clark Park.

ATTACHMENTS:

1. Ordinance
2. Lease Agreement
3. Location map
4. Aerial Photo
5. Landscape Plan
6. Photographs
7. Community Outreach Documentation

STAFF CONTACT(S): Shauna Warner, Neighborhood Services Manager, (480) 350-8883 and Kelly Rafferty, Deputy Community Services Director, (480) 350-5182

Department Director: Shelley Hearn, Community Services Director
Legal review by: Judi Baumann, City Attorney
Prepared by: Shauna Warner, Neighborhood Services Manager

ORDINANCE NO. 2013.51

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH THE TEMPE COMMUNITY ACTION AGENCY TO ESTABLISH A COMMUNITY GARDEN AT CLARK PARK.

WHEREAS, the City of Tempe has a vested interest in the health of its park system and its residents and owns and operates Clark Park located at 19th Street and Roosevelt Street in Tempe; and

WHEREAS, community gardens are an important strategy for City residents to improve nutrition and gain control over the quality and variety of their food supply, while lowering their cost of living; and

WHEREAS, the City desires to lease certain real property in Clark Park to TCAA, for the purpose of establishing a community garden from which the City will benefit; and

WHEREAS, the Tempe Community Action Agency will assume responsibility for restoring the site to graded land with all vegetation removed should the community garden at Clark Park no longer be maintained, and will agree to indemnify and hold harmless the City of Tempe for liability, damage, loss, or claim that occurs in connection with use of the City property.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

The Mayor is authorized to execute the Lease Agreement allowing the Tempe Community Action Agency's creation and maintenance of a community garden at the Clark Park.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of September, 2013.

Mark W. Mitchell, MAYOR

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney

**CITY OF TEMPE
COMMUNITY GARDEN AT CLARK PARK
LEASE AGREEMENT**

C2013-____

This Lease Agreement ("Lease") between City of Tempe ("City" or "Lessor"), a municipal corporation organized under the laws of the State of Arizona, and Tempe Community Action Agency ("TCAA" or "Lessee"), a private non-profit organization licensed to do business in the state of Arizona, is hereby entered into by the parties this ____ day of September, 2013, for use of a portion of Clark Park for a community garden, as stated herein.

RECITALS

WHEREAS, the City owns and operates the Clark Park ("Premises"), located at 19th Street and Roosevelt Street, Tempe, Arizona;

WHEREAS, the City has a vested interest in the health of its park system and its residents;

WHEREAS, a garden tended by a community's residents brings out the best in that community, becoming a source of physical activity, recreation and civic pride for all who participate, and the creation of a community garden will foster relationships among City residents creating strong neighborhoods;

WHEREAS, community gardens are an important strategy for City residents to improve nutrition and gain control over the quality and variety of their food supply, while lowering their cost of living; and,

WHEREAS, both parties desire to enter into an Agreement for Lessee's use and enjoyment of certain portions of the Premises for purposes of planting and cultivating a community garden, and the City is willing to offer for such use by Lessee, under the terms set forth herein.

AGREEMENT

1. LOCATION. Lessor, in consideration of the rents and covenants hereinafter provided, hereby leases to Lessee, and Lessee hereby leases from Lessor, the following described real property comprising approximately 27,000 square feet of land area located at 19th Street and Roosevelt Street at Clark Park, Tempe, Arizona, and legally described on Exhibit A-1 attached hereto and depicted on Exhibit A-2 attached hereto and incorporated herein by this reference (the "Premises").
2. NO WARRANTIES BY CITY. Lessor hereby leases the Premises to Lessee in its current condition, "as is", with no representation or warranty by the Lessor, as to the quality, condition or suitability of use, and without any liability or obligation on the part of Lessor of making any alterations, improvements, or repairs of any kind on or about the Premises, for a lease term not to exceed three (3) years, commencing on September 1, 2013, and continuing

each month thereafter, unless the Lease is earlier terminated as provided in this Agreement, through September 1, 2016 (the "Lease Term"), yielding a Lease payment of One and No/100 Dollars (\$1.00) per year; and Lessee does hereby covenant to pay the said rent in advance, on or before the first day of the Lease Term, and on or before September 1 of each year of the Lease Term and any renewal term thereafter, at the office of Lessor located at 3500 South Rural Road, 2nd Floor, Tempe, Arizona 85282, or at such other place as Lessor may designate in writing. If the Lease is terminated as provided herein at any time and the Lessee is not in default of the Lease, the Lessor shall return to the Lessee any prepaid rent prorated per day. Simultaneously with the execution of this Lease, the Lessee shall give the Lessor a check in the amount of \$0 as a refundable security deposit, and provided Lessee is not in default of the Lease, the security deposit will be returned to Lessee, without interest, promptly after the Lease termination date and the vacation of the Premises as provided herein. Should the City elect, this Lease may be renewed annually, for a term not to exceed three (3) years. Such renewal term(s) may include revisions to the Lease as determined by City in its sole discretion.

3. USE OF PREMISES.

- 3.1. Lessee is granted the right during the Lease Term to occupy and use the Premises for a community garden to be operated and maintained in accordance with the terms of this Lease and the Tempe Community Garden Lease Agreement Standards as stated in Section 3 herein, and for no other purposes; provided that Lessee shall, at its sole cost and expense, procure any and all necessary permits, certificates, licenses, and other authorizations required for said purposes.
- 3.2. Lessee hereby covenants and agrees that it shall not use or occupy the Premises or permit the Premises to be used contrary to any law, statute, ordinance, or regulation applicable thereto; nor permit, create, or tolerate any public or private nuisance upon said Premises.
- 3.3. Lessee shall not use or permit others to use the Premises for any purposes other than as expressly stated herein.
- 3.4. Lessee and all others who may use the Premises pursuant to this Lease shall use the Premises only in accordance with the uses specified by this Lease, and shall not discriminate upon the basis of race, color, creed, religion, ancestry, national origin, sex, gender, disability, age, marital status or status with regard to public assistance in the use or occupancy of the Premises or any part thereof.
- 3.5. In the use of the Premises the Lessee shall not, nor cause to be, nor allow any other person to deposit, store, dispose of, place or otherwise locate or allow to be located on or within the Premises, any hazardous substances, as defined herein, including as the term is defined and/or regulated under any Federal, State of Arizona or local statute, ordinance, code or regulation. In the event any such substances are found on or within the Premises, the Lessee will be solely responsible for any and all liabilities from such substances on, under or within the Premises, including the

removal and/or remediation of such substances. Lessee hereby agrees to fully indemnify the Lessor for any and all violations of this provision to the full extent of the law.

- 3.6. In the use of the Premises the Lessee shall comply with the following Community Garden Lease Agreement Standards:
 - 3.6.1. Lessee may place accessory buildings on the Premises subject to City's prior written approval, for the storage of tools, equipment and garden supplies only, as permitted by the City's Building Code and Zoning Code.
 - 3.6.2. Lessee may only place improvements and fixtures, including signage and fencing (which shall be no less than four feet (4') in height), water meter(s), lighting, benches, and the like, on the Premises pursuant to a Development Plan Review previously submitted to and approved by Lessor.
 - 3.6.3. Lessee shall provide soil test results to City for the Premises, thirty (30) days prior to the start of the Lease Term.
 - 3.6.4. Lessee shall provide raised bed gardens with at least twelve (12) to eighteen (18) inches of clean top soil for edible vegetable and fruit gardens or garden plots.
 - 3.6.5. Lessee shall provide and be solely responsible for the use, maintenance and cost of all utilities required for the operation of the community garden on the Premises, including all water sewer, and electricity.
 - 3.6.6. Lessee shall operate and maintain the Premises in a neat and orderly manner and in accordance with all applicable City ordinance requirements, including erosion control, weed control, trash pick-up, and dust control on a daily basis.
 - 3.6.7. Lessee shall follow standard park hours at Clark Park, and shall not permit gardeners or invitees to enter the Premises before 6:00 a.m. or be on the Premises after 10:00 p.m. Lessee shall also require gardeners to conduct their activities on the Premises in a manner that does not disturb the peaceful and quiet enjoyment of the residents who live in the neighborhood or create nuisances as prohibited by the Tempe City Code.
 - 3.6.8. Lessee shall not use or store petroleum-based products, fertilizers, pesticides, propane or other chemicals on the Premises. Use of raw animal and/or human sewage is expressly prohibited on the Premises.
 - 3.6.9. Sales of produce from the garden are permitted in compliance with local and state laws. Sales of any merchandise other than produce shall be undertaken only upon prior express permission by Lessor, in compliance with Tempe

City Code and applicable state law. Lessee shall be solely responsible for payment of any and all associated taxes, license fees and permitting fees.

- 3.6.10. Lessee agrees to pay City, within thirty (30) days of being billed, the expenses incurred by City during the term of the Agreement for applicable utility costs directly related to Licensee's use, including but not limited to water and sewage expenses, and solid waste disposal.
- 3.6.11. The Premises shall be available for Lessee's use on City property on a first-come, first-serve basis, with the exception that Lessee agrees to cooperate with City for other specified primary and/or secondary users at Clark Park to coordinate and schedule use of the Premises to the satisfaction of both parties. All special events of Lessee's shall be coordinated prior to the event through the City Special Events permitting process. In no event shall parking for Lessee's use take up more than fifty percent (50%) of the available parking spaces at or around Clark Park. In the event of a dispute arising from such use, parking or scheduling, the City shall determine the use, parking and scheduling for Clark Park, in its sole discretion.
- 3.6.12. Lessee agrees to maintain its non-profit status during the Lease Term of this Agreement. Should Lessee fail to qualify as a tax-exempt charitable organization or otherwise cease to operate as a charitable organization under I.R.C. 501(c)(3), the City may immediately terminate this Agreement in addition to all other rights and remedies available by law or in equity, for breach of this Agreement.
- 3.6.13. Lessee agrees and acknowledges that the Premises is part of the Tempe City Parks system and as such, public access on and to the Clark Park is allowed at all times, for the use and during the hours designated by the City. Clark Park allows for uses other than a community garden. As a result, Clark Park may be accessed and visited by the public at any time. City in no way warrants or guarantees that the garden will not be disturbed, vandalized, or protected for use by Lessee. The use granted by this Agreement is not superior to other uses for the park and Lessee agrees to coordinate its use accordingly.
- 3.6.14. The following shall be provided by Lessee at its sole expense, in compliance with the Americans with Disabilities Act (ADA), as amended from time to time: (a) an accessible pathway to garden beds through any gates and from an accessible park pathway of thirty-six inches (36") wide; (b) stable, firm and slip resistant ground surfaces with no changes of the surface area more than one-fourth inch (1/4") vertical, and one-half inch (1/2") vertical ramped at 1:2; (c) sides of raised garden beds to be twelve inches (12") to eighteen inches (18"); access for individuals with a disability to supplies, tools, watering implements, and other equipment; (d) at least twenty-five percent

(25%) of all garden beds raised. Lessee shall submit all plans pertaining to ADA compliance to the City for approval.

4. MAINTENANCE AND REPAIR. During the Lease Term, Lessee at its sole cost and expense shall do and perform the following:
 - 4.1. Keep the Premises in a neat, clean, pest-free and debris-free condition, including but not limited to keeping the Premises free of weeds, pests, dead vegetative materials, garbage, compost, offensive odors, and tools and equipment. Storage of tools and equipment is expressly prohibited on the Premises at all times.
 - 4.2. Keep the Premises clear of all obstructions or refuse of any kind.
 - 4.3. Keep and maintain the Premises in good and substantial repair so that the Premises fully complies with all applicable laws, statutes, ordinances, and regulations.
 - 4.4. Keep and maintain any abutting sidewalk around the Premises in a neat, clean and dust-free condition, free and clear of all obstructions or refuse of any kind.
 - 4.5. In the event the Premises shall be in such condition, need or state of disrepair that Lessee cannot continue to occupy and use the Premises as permitted hereunder, Lessor shall have no obligation to make, or liability for not undertaking to make, any alterations, improvements or repairs of any kind to the Premises or building necessary to continue Lessee's use and occupancy of the Premises during the Lease Term, and that upon such an event Lessee may make the alterations, improvements or repairs necessary to continue the Lease, all at Lessee's sole cost and expense, and with the prior written approval of Lessor, which approval shall not be unreasonably withheld.
 - 4.6. Erect and maintain a fence of no less than four feet (4') in height enclosing the community garden Premises.
 - 4.7. Premises shall at all times be under the control of Lessee. As a result, Lessee is solely responsible for all security to protect the community garden on the Premises. However, the City reserves the right to have designated employees or agents enter the Premises at any and all reasonable times. The designation of authorized individuals authorized to enter the Premises shall be determined solely by the City or its designee. City retains the right at all times to cause the interruption of any event when in the sole judgment of the City or its designee, such interruption is necessary in the interest of public health or safety.
5. ALTERATIONS AND MODIFICATIONS. Lessee shall not make, or cause to be made, any alterations or modifications to the Premises without the prior written consent of the Lessor. All Lessor-approved alterations and modifications shall be (i) performed and completed in a good, workmanlike manner at the sole cost and expense of Lessee; (ii) completed in compliance with all applicable laws, ordinances, codes, rules, regulations,

and/or orders; and (iii) shall become a part of the Premises, and any title shall vest in and be retained by Lessor. In any operation where more than one-tenth (1/10th) of an acre of surface area is disturbed and/or when unpaved onsite haul roads are used, Lessee will obtain a Maricopa County Earth Moving Permit as required under Rule 200 of the Maricopa County Division of Air Pollution Control Requirements, as amended from time to time. This permit requires a Control Plan to mitigate dust and tracking problems be submitted to the County for approval prior to issuance of the Earth Moving Permit. Lessee agrees to submit the Control Plan to the City for review prior to County submittal, to ensure that all elements of the planned operation are covered. Maricopa County Division of Air Pollution Control may be reached at 602-506-6700.

6. IMPROVEMENTS AND LIENS.

6.1. Lessee covenants and agrees that any and all improvements made by Lessee to the Premises during the Lease Term shall be made only with the written consent of Lessor, and shall, at the termination of this Lease, without any cost to the Lessor, right of recoupment or right of set-off against any unpaid rents, become the sole property of Lessor.

6.2. Lessee shall not permit the Premises to become subject to any lien, including for liens imposed as the result of activities of Lessee, and if any lien attaches to the Premises or any portion thereof, it shall constitute a material breach of the Lease. Lessor retains the right in its discretion to pay and discharge any such liens, and the amount of the liens, together with costs and reasonable attorneys' fees, shall become additional rent due immediately hereunder from Lessee.

7. UTILITIES AND SERVICES. Lessee shall be solely responsible for the provision and payment of all City water, electricity, heat, sewage, air conditioning, or storm sewer charges, including the installation of a water meter, or any other utility service used on the Premises during the Lease Term, and any accruing prior to or following the Lease Term, relating to Lessee's use of the Premises.

8. ASSIGNING AND SUBLETTING. Lessee will not assign or underlet the Premises or any part thereof without the prior written consent of Lessor. The Lessor hereby consents to permitting community gardeners access to and use of the Premises in accordance with the terms of this Lease Agreement. Lessor shall have the right to impose a fee for parking and such fee shall not violate the provisions of this Lease.

9. RIGHT OF INSPECTION. Lessee agrees to permit Lessor or Lessor's agents, contractors, or employees to enter the Premises at all reasonable times, and at any time in the case of emergency maintenance or repair, to view, or for normal maintenance or repair work, and Lessee hereby waives any and all claims and demands for loss or damage or diminution of rent on account thereof. Lessor shall conduct its right of entry in a manner so as to reasonably minimize the disruption of Lessee's operations.

10. INDEMNIFICATION. Lessee agrees to pay and to protect, indemnify and save harmless Lessor from and against, any and all liabilities, damages, costs, expenses (including any and all attorneys' fees and expenses of Lessee and any and all reasonable attorneys' fees and expenses of Lessor), causes of action, suits, claims, demands, or judgments of any nature whatsoever arising from any acts or omissions as a result of Lessee's or any of its agents, servants, employees, contractors, licensees, sublessees or invitees use and occupancy of the Premises, including, but not limited to, the following:
- 10.1. Any work or thing done in, on, or about the Premises or any part thereof, except for any work or things done by Lessor.
 - 10.2. Injury to, or the death of persons or damage to property on the Premises or upon adjoining sidewalks Lessee is required to maintain under this Lease, including such injuries, death or damages which may occur on adjoining streets, alleys and curbs attributable to Lessee's obligation to maintain the adjoining sidewalk under this Lease, or in any manner growing out of or connected with the use, non-use, condition, possession, operation, maintenance, management, or occupation of the Premises.
 - 10.3. Any negligence on the part of the Lessee and any of its agents, contractors, servants, members, officers, directors, volunteers, employees, licensees, sublessees and/or invitees.
 - 10.4. Violation of any agreement or condition of this Lease and of conditions, agreements, restrictions, statutes, charters, laws, rules, ordinances, or regulations affecting the Premises or the ownership, occupancy, or use thereof.
 - 10.5. Nothing herein shall be construed to obligate Lessee to protect, indemnify, and save Lessor and its officers and employees harmless from and against liabilities, losses, damages, costs, expenses (including attorneys' fees), causes of action, suits, claims, demands, and judgments arising from or by reason of the grossly negligent or intentional wrongful acts of Lessor or any of its agents, employees, or officers.
11. INSURANCE. Lessee agrees at Lessee's own cost and expense to carry full coverage fire and hazard insurance, including full replacement costs, for any improvements located on the Premises and comprehensive general liability insurance naming Lessor as an additional insured, in amounts not less than Two Million Dollars (\$2,000,000.00) with respect to bodily injury or death and property damage; and upon signing this Lease, Lessee shall furnish Lessor with a certificate of insurance effective as of the date of this Lease. All policies shall be endorsed to include a provision that the policy cannot be canceled or changed until thirty (30) days after written notice of such change or cancellation has been delivered to Lessor. Lessee shall not take any action to cancel such policy or to allow such policy to lapse without obtaining a new general liability insurance policy reasonably acceptable to Lessor, to be effective upon or prior to the expiration of the prior insurance policy. Copies of all required insurance policies shall be provided to Lessor within sixty (60) days after the date of this Agreement. Lessor's acceptance of such certificates shall, to

the extent of the information provided in such certificates, constitute evidence of Lessee's compliance with the policy limit requirements of this Lease. This insurance may be maintained as a part of any blanket insurance policy maintained by Lessee from time to time.

12. TAXES. Lessee shall be responsible for the payment of any property or other applicable taxes (personal or real estate) or ad valorem taxes and assessments which may be assessed, levied or imposed upon the Lessee or the Premises during the Lease Term including any resulting from Lessee's occupancy and/or use of the Premises. Lessee shall have the right to lawfully contest the amount of any such taxes or assessments.

13. BREACH AND RIGHT OF RE-ENTRY. If the rent payments, or any of them, whether the same be demanded or not, are not paid when they become due and such nonpayment continues after ten (10) days' written notice to Lessee; or if any part of the Premises shall be assigned without the consent of Lessor as required herein; or if any term, condition, covenant, or obligation is breached by Lessee, Lessee hereby authorizes and fully empowers Lessor to use all lawful means available to terminate this Lease Agreement, and to re-enter and take possession of the Premises, and remove all property thereon.

14. TERMINATION OF LEASE AGREEMENT.
 - 14.1. At any time during the Lease Term, either the Lessor or the Lessee may terminate this Lease Agreement without cause by giving the other party ninety (90) days prior written notice of Lease termination.

 - 14.2. The Lessor may terminate the Lease Agreement with cause for a breach by Lessee of this Agreement by giving Lessee ten (10) days prior written notice of Lease. Further, Lessor may cancel this Agreement at any time in its sole discretion, and in addition, may cancel the Agreement pursuant to A.R.S. §38-511.

 - 14.3. If the Lessee defaults hereunder, the Lessor may apply all or any portion of the security deposit, if any, to cure any such default, in addition to any other remedies in equity and/or provided by law, in which event the Lessee will be obligated to promptly deposit with the Lessor the amount necessary to restore the security deposit to its full amount. In the event of termination for any reason, Lessee will keep and maintain the Premises during the Lease Term, and quit and deliver up the Premises to Lessor peaceably and quietly at the end of the Lease Term, or at the end of any renewal of the Lease Term, or at any earlier termination date determined by Lessor, in a good order and condition, and restored to graded land with all vegetation removed, reasonable use excepted.

15. NO RELOCATION BENEFITS. Upon termination of the Lease, Lessee acknowledges and agrees that it is not entitled to receive any relocation benefits or assistance under federal and state relocation laws and regulations and shall make no claim for such relocation benefits.

16. ADA AND LEGAL COMPLIANCE. Lessee in the construction, repair and/or maintenance of any improvements on the Premises shall fully comply with state law concerning the Legal Arizona Workers' Act and the requirements of the Americans with Disabilities Act (ADA), as amended from time to time. Lessee is solely responsible to select and retain contractors for the construction, installation, repair or maintenance of all permitted improvements, so long as all selection, retention and payment is in compliance with applicable law. Lessor shall not in any way, be held liable or responsible for the debts of Lessee, including and obligations concerning construction, installation, repair or maintenance of the Premises.
17. ENTIRE AGREEMENT. This Lease Agreement contains the entire agreement of the parties hereto on the matters covered herein. No other agreement, statement, amendment, modification or promise made by any party or by any employee, officer, or agent of any party shall be binding, unless it is in writing and signed by all the parties to this Lease Agreement.
18. GOVERNING LAW. This Lease Agreement is to be construed and enforced according to and governed by the laws of the State of Arizona, County of Maricopa.
19. TIME. Time is of the essence in the performance of this Lease Agreement.
20. SEVERABILITY. Should any term or provision of this Lease Agreement be held to be invalid or unenforceable then the remainder of this Lease Agreement shall not be affected thereby and each term and provision shall be valid and enforceable to the fullest extent permitted by law.
21. SUCCESSORS. All of the provisions contained in this Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
22. CAPTIONS. The captions of this Lease Agreement are for convenience only, and are not a part of this Lease Agreement and do not in any way limit or amplify the terms and provisions hereof.
23. NOTICES. Any notice, consent or waiver required or permitted to be given or served by either party to this Lease Agreement shall be in writing and either delivered personally to the other party or mailed by certified or registered mail, return receipt requested, addressed as follows:

LESSOR: Tempe Community Services Department
Social Services Division
Attn: Naomi Farrell, Deputy Community Services Director
3500 South Rural Road, 2nd Floor
Tempe, Arizona 85282

LESSEE: Beth Fiorenza, Executive Director
Tempe Community Action Agency

2150 East Orange Street
Tempe, Arizona 85281

Either party may change its address by serving written notice on the other party.

24. SURRENDER OF POSSESSION. Lessee shall on the last day of occupancy, or on the earlier termination as provided in this Lease Agreement, peaceably and quietly surrender and deliver the Premises, and every part thereof, to Lessor. Any trade fixtures, equipment or personal property used in connection with the use and operation of the Premises which are not removed at the termination of this Lease Agreement shall, be deemed abandoned and become the sole property of Lessor without any payment or offset therefore.
25. BINDING. The parties agree that all the covenants, terms, obligations, and conditions of this Lease shall extend, apply to, and firmly bind the heirs, executors, administrators, successors, and assigns of the respective parties hereto as fully as the respective parties are themselves bound, but this provision shall not authorize the assignment or underletting of this Lease contrary to the provisions herein contained.

The parties have signed and executed this ___ ^{SEPTEMBER} ~~August~~ day of 2013. (S)

LESSOR: CITY OF TEMPE, a municipal corporation

By: _____
Mark W. Mitchell, Mayor

Approved as to form:

Judith R. Baumann, City Attorney

LESSEE: Tempe Community Action Agency, a private, non-profit corporation

By: _____
Name
Executive Director
Title

ATTEST:

Brigitta W. Kuiper, City Clerk (S)
M.

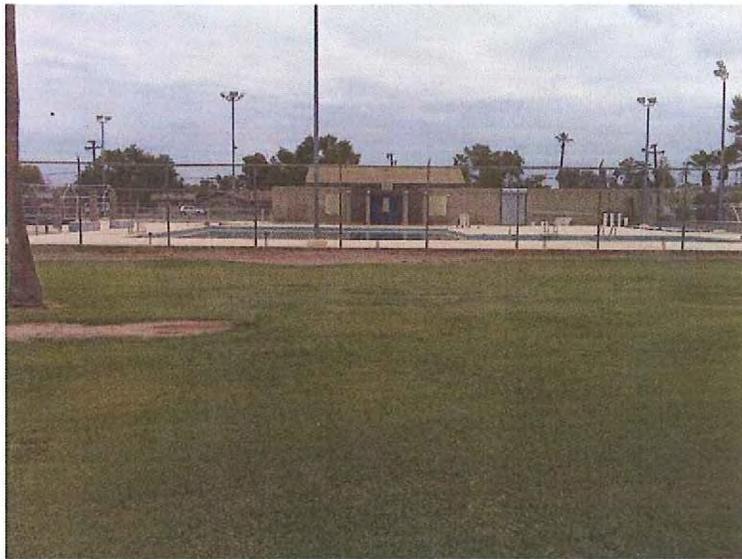
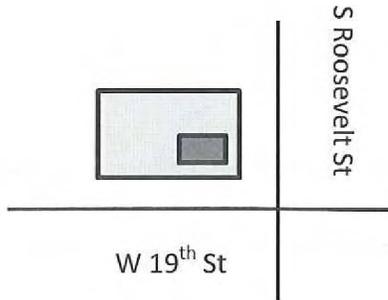
Exhibit A-1

LEGAL DESCRIPTION

All that certain parcel or parcels of land located at 19th Street and Roosevelt Street, in the City of Tempe, County of Maricopa, State of Arizona, more particularly described as follows:

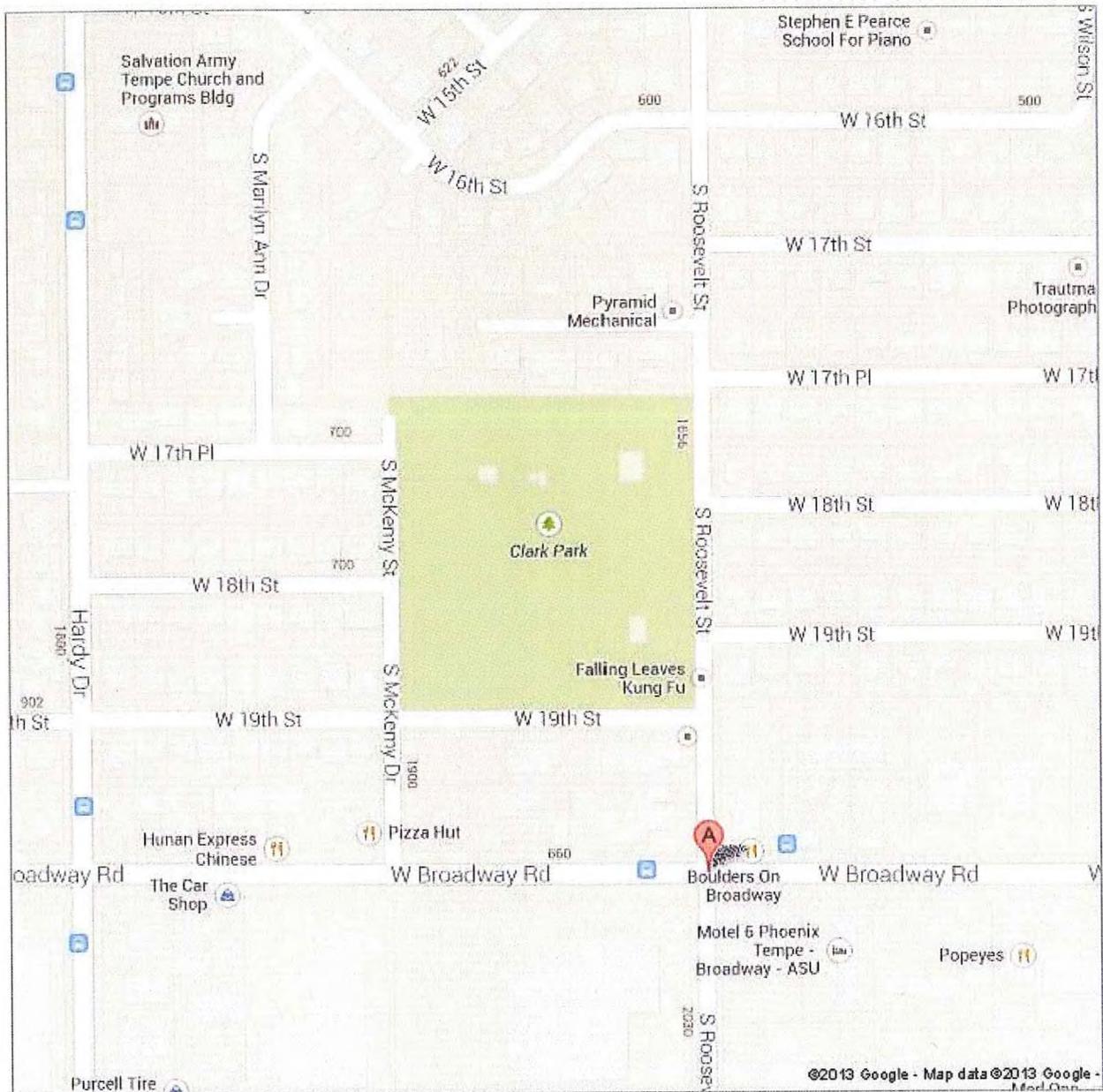
Exhibit A-2

“PREMISES” DEPICTION



ATTACHMENT 3

Location Map



ATTACHMENT 24

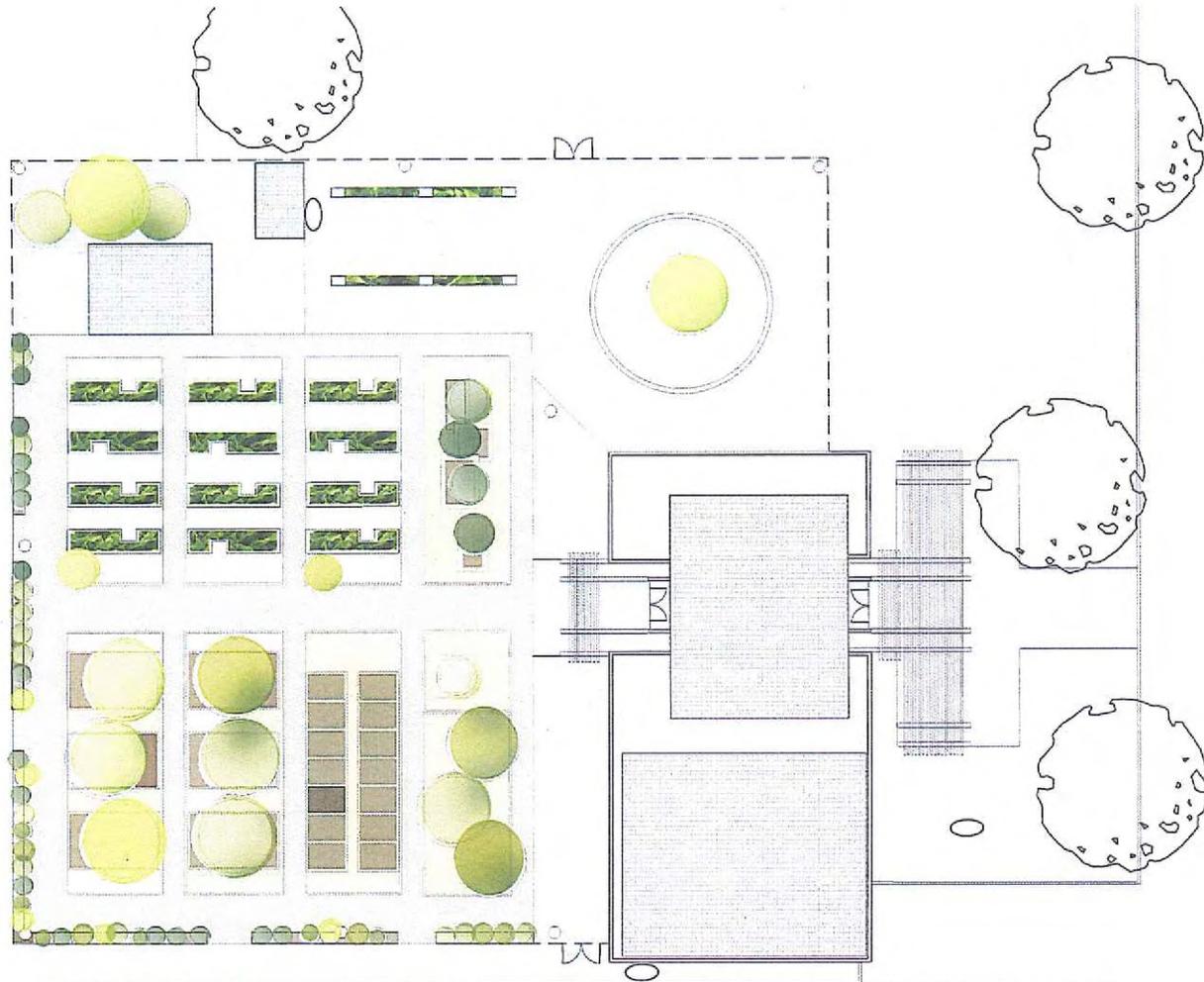
Clark Park Community Garden Aerial Photo



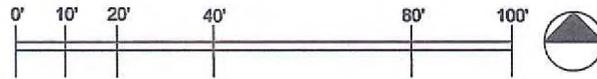
Legend

 Community Garden

ATTACHMENT 5

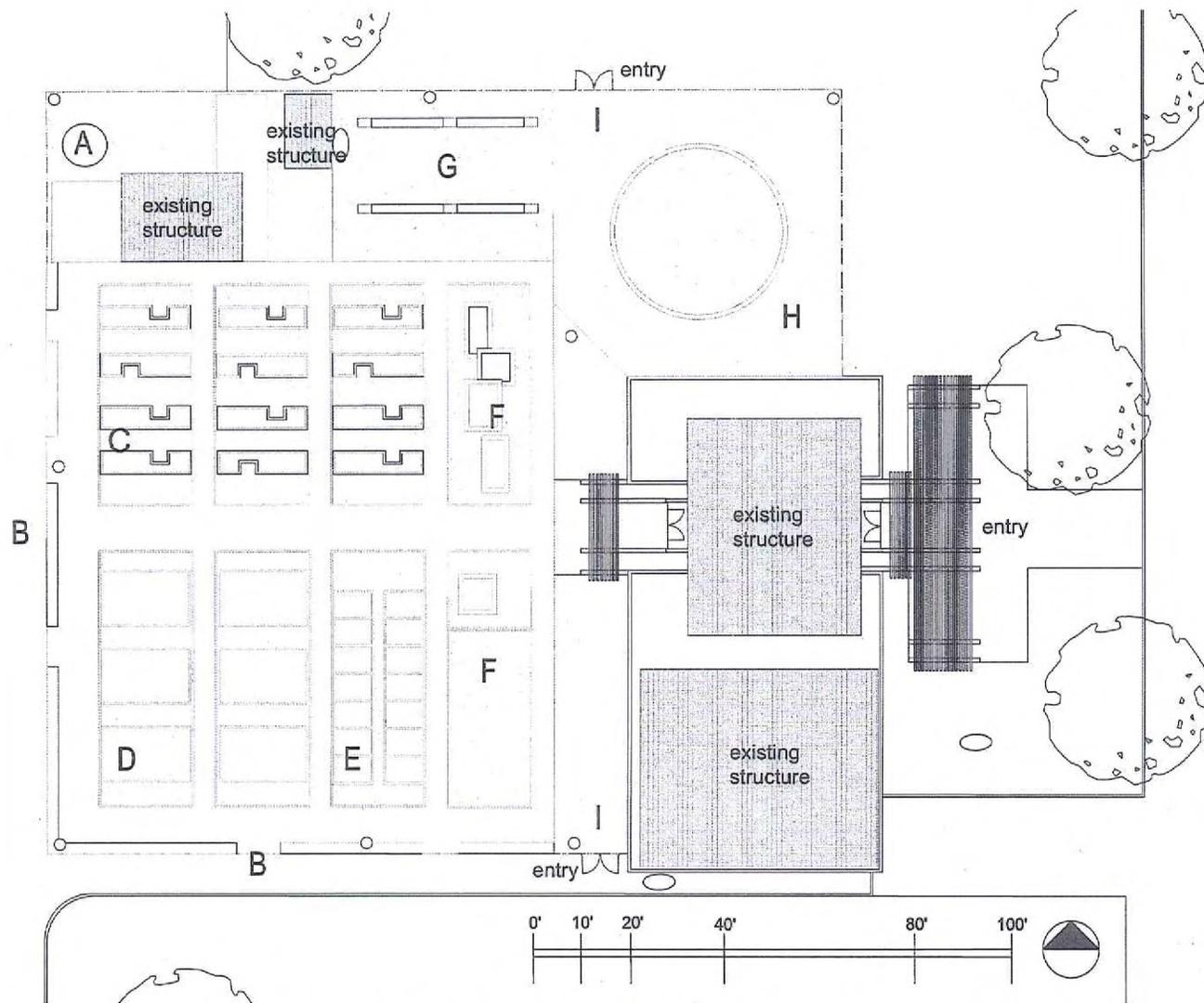


Clark Park Pool



Clark Park Community Garden *Rough Draft*





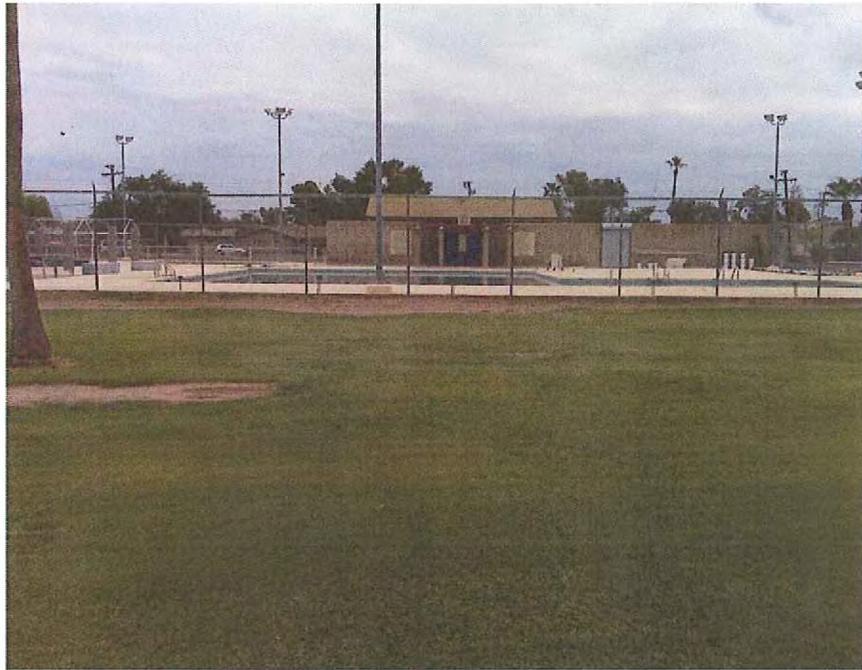
- A existing shade structure / workspace
- B fence to be used for vertical planting / greenwall
- C wheelchair accessible raise planting beds (3 feet in height)
- D in ground plots sized for medium to large trees
- E small in ground plots
- F in ground planting plots sized for large trees
- G existing CMU block columns to be converted and used as vertical planting
- H existing wading pool to be filled and used for planting
- I proposed entry

Material for walkways pending on results of pool demolition. Ideally, the plan is to reuse salvageable pieces of pool deck and concrete / decomposed granite is another option being considered.

Clark Park Community Garden Project Layout Tempe, AZ

ATTACHMENT 6

Photographs



ATTACHMENT 4/7

Community Outreach Documentation

POSTCARD

CLARK PARK POOL

Future of the pool area meeting

Residents are invited to participate in a discussion regarding the future use of the Clark Park Pool area. The pool and bathhouse have reached its useful lifecycle and can no longer be operated under existing conditions. Community Services Department would like to talk with residents about ideas to make this area of the park useful and energized. Your input on this topic is important, please join us on:

Monday, December 3, 2012

6:30 p.m.

Clark Park Recreation Center

1730 S. Roosevelt Street

Please be sure to attend this important meeting and participate in the discussion. For questions or comments contact Travis Dray (480) 350-5182 or travis_dray@tempe.gov.

TEMPE FORUM

Use of Clark Park Pool Space

Question

Of the three Clark Park Pool space options, which do you prefer?

- Dog Park
- Open Space/Sports Field (soccer, football, etc.)
- Community/Wildlife Garden***

******Area residents (not the City of Tempe) will be responsible for the organization, administration, fees and fundraising, supervision and enforcement of garden rules and policies.***

Background

Clark Park was purchased and constructed in 1949. The swimming pool was added in 1974. The City operated and maintained the pool for public swimming through 2008. Following the 2008 swim season, Clark Park Pool closed. In 2007 Tempe City Council approved the Park and Special Facilities Rehabilitation Priority List, which listed Clark Park and Clark Park Pool as the sixth priority item. The Park Rehabilitation Project was approved in the FY 2007-2008 CIP Budget. The November 2008 bond election approved the construction funding necessary for the renovation and restoration of Tempe's parks.

The Clark Park and Pool Rehabilitation Project completed the public master planning process in 2008. A series of three public meetings (February, May and August) was held, and the master plan for both the park and the pool were developed and finalized. The master plan was presented to the Parks and Recreation Board and the Council's Neighborhood Rehabilitation and Maintenance Committee in September of 2008. Tempe City Council continued to approve the Park Rehabilitation Project until 2010. Construction design of Clark Park and Pool was scheduled to begin in 2010. The economic downturn, coupled with a severe decline in property value, forced the majority of the City's CIP projects, including the Parks Renovation and Rehabilitation Projects, to be placed on hold.

Current Status

The Clark Park Pool, as an asset, has exceeded its useful life. The Clark Park Pool cannot be reopened to the public without major renovations and improvements for which there is not sufficient funding available. Since its closing, the City annually spends \$40,000 to maintain the Clark Park Pool. This consists of water, electricity, pool chemicals and labor. On June 14, 2012, Tempe City Council adopted the FY 2012-13 CIP Budget, which included \$115,000 for interim use of the Clark Park Pool site. This budget provides the fiscal resources to convert the pool site space into a use that the neighborhood agrees would be acceptable. On December 3, 2012, a neighborhood meeting was held at the Clark Park Recreation Center to speak with area residents about interim use of the pool site. The neighborhood selected three options that would working within budget guidelines.

The city of Tempe is seeking neighborhood input as to which option residents would prefer:

- Dog Park
- Open Space/Field
- Community/Wildlife Garden

The final decision will be based on input received from area residents. For more information, please contact Shauna Warner, Neighborhood Services Manager, at 480-350-8883 or shauna_warner@tempe.gov.

POSTCARD

Clark Park Pool Reuse Project

The city of Tempe is seeking neighborhood input into the interim use of the Clark Park Pool area. The Clark Park Pool has exceeded its useful life, and can't be reopened in its current condition. Annually Tempe spends \$40,000 to maintain the closed Clark Park Pool.

On June 14, 2012, Tempe City Council adopted the FY 2012-13 CIP Budget which included \$115,000 for interim use of the Clark Park Pool site. This budget provides the fiscal resources to convert the pool site space into a use that the neighborhood agrees would be acceptable.

On December 3, 2012, a neighborhood meeting was held at the Clark Park Recreation Center to speak with area residents about interim use of the pool site. The neighborhood selected three options that would work within budget guidelines.

The city of Tempe is seeking neighborhood input as to which option residents would prefer:

- Dog Park
- Open Space/Sports Field
- Community/Wildlife Garden

The final decision will be based on input received from area residents. To provide comments, please visit, www.tempe.gov/forum between January 15 and January 29, 2013.

If you do not have access to the Internet and want to provide comments, or for more information, please contact Shauna Warner, Neighborhood Services Manager, at 480-350-8883 or shauna_warner@tempe.gov

A meeting to discuss the final decision and next steps will be held:

February 11, 2013

6:00 p.m.

Clark Park Recreation Center

1730 S. Roosevelt Street

Please be sure to attend this important meeting and participate in the discussion.

POSTCARD

Clark Park Neighborhood Association Meeting

Tuesday, June 4 from 6 – 7 p.m.

Clark Park Recreation Center – 1730 S. Roosevelt St., Tempe

Community Garden Update and Input

The Community Garden Committee will be updating residents on the progress and a timeline of events for an interim use of the Clark Park pool area as a community garden. Feel free to bring your ideas and input on the garden layout and partnerships. The Marilyn Ann Neighborhood Association will also be joining us to discuss the project.