

BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

Requested Board Meeting Date: December 13, 2016

or Procurement Director Award

Contractor/Vendor Name (DBA): The Tucson January 8th Memorial Foundation, an Arizona non-profit corporation.

Project Title/Description:

The January 8th Memorial Funding Agreement

Purpose:

The Agreement establishes a Fund to be managed by Pima County for the acceptance of donations from the January 8th Memorial Foundation to be used for the design and construction of the January 8th Memorial.

For several years, the January 8th Memorial Foundation has been laying the groundwork for a memorial to the victims of the shooting which occurred on January 8, 2011. In the shooting, Congresswoman Gabrielle Giffords was critically wounded, six individuals were killed and 13 others were wounded during a "Congress On Your Corner" event. The proposed memorial includes gardens and walkways along the north and west sides of Pima County's Old Courthouse and a memorial located just west of the Old Courthouse's entrance to El Presidio Park. The Foundation's master plan also includes major renovations to the City of Tucson's El Presidio Park.

This agreement relates only to the design and construction of the memorial and gardens expected to be located on Pima County property and does not include improvements planned for the City's El Presidio Park. The funds provided to the County from the Foundation would be held in a restricted fund to be used solely for the Memorial. The Agreement has a term of five years by which time the parties expect the Memorial will have been completed.

Procurement Method:

N/A

Program Goals/Predicted Outcomes:

N/A

Public Benefit:

To establish a permanent memorial to the victims of the January 8, 2011 shooting at Congresswoman Giffords' Congress On Your Corner.

Metrics Available to Measure Performance:

N/A

Retroactive:

No

Original Information

Document Type: CTN Department Code: FM Contract Number (i.e., 15-123): 17*121

Effective Date: 12/9/2016 Termination Date: 12/9/2021 Prior Contract Number (Synergen/CMS): _____

Expense Amount: \$ _____ Revenue Amount: \$ 5,000,000

Funding Source(s): _____

Cost to Pima County General Fund: _____

Contract is fully or partially funded with Federal Funds? Yes No Not Applicable to Grant Awards

Were insurance or indemnity clauses modified? Yes No Not Applicable to Grant Awards

Vendor is using a Social Security Number? Yes No Not Applicable to Grant Awards

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

Amendment Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____

Amendment No.: _____ AMS Version No.: _____

Effective Date: _____ New Termination Date: _____

Expense Revenue Increase Decrease Amount This Amendment: \$ _____

Funding Source(s): _____

Cost to Pima County General Fund: _____

Contact: Annette Conner

Department: Facilities Management Department Telephone: 724-2774

Department Director Signature/Date: [Signature] 12/9/16

Deputy County Administrator Signature/Date: [Signature] 12-9-16

County Administrator Signature/Date: by [Signature] 12-9-16
(Required for Board Agenda/Addendum Items)

PIMA COUNTY FACILITIES MANAGEMENT DEPARTMENT	<table border="1"> <tr> <td colspan="2" style="text-align: center;">CONTRACT</td> </tr> <tr> <td>NO.</td> <td><u>CTN-FM-17-121</u></td> </tr> <tr> <td>AMENDMENT NO.</td> <td>_____</td> </tr> <tr> <td colspan="2"> This number must appear on all invoices, correspondence and documents pertaining to this contract. </td> </tr> </table>	CONTRACT		NO.	<u>CTN-FM-17-121</u>	AMENDMENT NO.	_____	This number must appear on all invoices, correspondence and documents pertaining to this contract.	
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PROJECT: The January 8th Memorial Funding Agreement									
PARTY: The Tucson January 8th Memorial Foundation									
FUNDING: N/A									
TERM: Five (5) Years									

**Agreement For Funding Of The Design And Construction Of Improvements
Of The Tucson January 8th Memorial**

1. **Parties, Effective Date.** This Agreement ("Agreement") is entered into between Pima County, a body politic and corporate ("County") and The Tucson January 8th Memorial Foundation, an Arizona non-profit corporation ("Foundation"). This Agreement is effective as of the date it is executed by both County and Foundation (the "Effective Date").

2. **Background and Purpose.**
 - County is in the process of renovating the County courthouse constructed in 1928 located at 115 N. Church Avenue, Tucson (the "Old Courthouse").
 - The Foundation has collaborated with Pima County and the City of Tucson to master plan and develop a memorial (the "January 8th Memorial" or the "Memorial") in remembrance of the victims of the January 8, 2011 shooting that occurred in Tucson on that date to be located on the west and north side of the Old Courthouse primarily on land owned by Pima County, but including some land owned by the City of Tucson.
 - The Foundation has prepared a preliminary design of the Memorial and desires to have Pima County complete the design and construction drawings for the Memorial and to construct the Memorial.
 - The Foundation wishes to donate or to cause to be donated funds to the County through the Foundation restricted for the purpose of having the County complete the design and cause the construction of the January 8th Memorial.
 - The Foundation has also collaborated with Pima County and the City of Tucson to master plan the City of Tucson's El Presidio Park which is adjacent to the Old Courthouse. The proposed improvements shown in the El Presidio Park master are not a component of this Agreement.

3. **Term.** The term of this Agreement begins on the Effective Date and ends on the date that is five (5) years after the Effective Date unless sooner terminated as provided herein.

4. **Design and Construction.** The Foundation will provide the County with all design documents completed by the Foundation's architect, Chee Salette Architecture Office.

5. Funding of Design and Improvements. The nature and extent of the improvements that County will construct for the January 8th Memorial depends upon the funding that Foundation will provide to County hereunder. County is not obligated to construct any improvements until and unless Foundation has donated or caused to be donated a minimum of \$5,000,000 ("Minimum Donation Amount") to County. County will hold the Minimum Donation Amount in a restricted fund dedicated for the improvement in the "January 8th Memorial Fund" (the Donation Fund). The Minimum Donation Amount is the amount expected to be required to complete the design and construction of the Memorial as envisioned by the Foundation and County and as shown on the Concept Design documents attached to this Agreement as Exhibit "A" (the "Improvements"). The County will commence with the construction documents before the Minimum Donation Amount is received provided the Foundation delivers to the County an amount not less than the amount necessary to complete the construction documents. Foundation acknowledges that failure to raise the Minimum Donation Amount could require substantial changes to the construction documents at additional costs. Such additional cost would be paid for from amounts provided by the Foundation.

The Donation Fund will be an interest bearing Local Government Investment Pool account maintained with the Arizona State Treasurer and will be restricted solely for uses for the Memorial design, construction and subsequent maintenance.

The Foundation acknowledges that the design of the Memorial is still in the design development phase and acknowledges that final design and construction documents, which will be completed by Pima County, have not been started. During the preparation of the final design and construction documents, the County shall have the ability to alter the preliminary design as it deems necessary to accommodate the construction of the Memorial at the proposed location while using reasonable efforts to keep the concept as shown in the Concept Design documents.

County intends to retain the design firm which completed the existing design and to develop construction documents for any and all constructed improvements proposed for the January 8th Memorial. County has final approval authority over the design and construction of the improvements. Once approved, County will submit final construction drawings to one or more contractors to solicit bids to complete the Improvements as designed.

County will select and award the appropriate County contractor the contract to complete construction of the Improvements provided the in cash construction cost of the Improvements, including all permitting fees, does not exceed the remaining available funds in the Donation Fund for this purpose. All Improvements to be constructed within the January 8th Memorial hereunder will remain the property of County unless the County conveys ownership to another governmental jurisdiction that agrees to maintain the Memorial.

If the cost of the Improvements exceeds available funding in the Donation Fund, County will so notify Foundation and Foundation will cause an increase in the Donation Fund to cover all costs associated with the Improvements or will work with County to value engineer the Improvements to reduce project costs to a level consistent with the available funds and the design intent described in the Design Development documents. In the event County is unable to construct the Improvements with the available funds in the Donation Fund and Foundation is unable to raise sufficient additional funds to allow the construction to occur, Foundation may request that the remaining funds in the Donation Fund be returned to Foundation and this Agreement will terminate.

In the event that Foundation causes more than the Minimum Donation Amount to be raised and contributed to the Donation Account or if the Donation Account has excess funds remaining after all costs associated with the Improvements are covered, Foundation and County will meet and confer upon additional improvements to be designed and constructed utilizing the excess funds in the Donation account. If the parties are unable to agree on

additional improvements, then any excess funds remaining in the Donation Account will, at the request of Foundation, be returned to Foundation or be set aside in a restricted fund to be used for future repairs to the Memorial.

Nothing in this Agreement obligates the expenditure of any County funds for the planning, design or completion of any improvements other than those funds which Foundation or others contribute to the Donation Account except for internal County labor costs.

6. Grants and Legal Designations. The County will cooperate with and provide support to the Foundation grant requests for funding of the development and construction of the Memorial, and will permit any federal or state governmental designations of the Memorial and the physical facilities on or within which the Memorial exists. The County's obligations hereunder shall be limited only by material, financial obligations attendant to any grant or designation.

7. Compliance with Laws. The parties will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract must be filed and maintained in a court of the State of Arizona in Pima County. Any changes in the governing laws, rules, and regulations during the terms of this Contract apply, but do not require an amendment.

8. Americans with Disabilities Act. The parties will comply will all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

9. Authority to Contract. Foundation warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County is not liable to Foundation or any third party by reason of such determination or by reason of this Contract.

10. Full and Complete Performance. The failure of either party to insist on one or more instances upon the full and complete performance of any of the terms or conditions of this Contract to be performed on the part of the other, or to take any action permitted as a result thereof, is not a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.

11. Conflict of Interest. This Contract 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 Contract on behalf of County is, at any time while this Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract with respect to the subject matter of the Contract.

12. No Agency Created. Nothing in this Agreement creates any partnership, joint venture, or agency relationship between the parties.

13. No Personal Liability. No member, official or employee of County is personally liable to Foundation or to any successor or assignee by virtue of 1) any default or breach of this Agreement by County, 2) for any amount

which may become due from County to Foundation or to any successor or assign, or 3) pursuant to any obligation of County under this Agreement.

14. No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement and no person or entity not a party hereto has any rights or causes of action by virtue of this Agreement.

15. Non-Appropriation of Funds. Notwithstanding any other provision of this Agreement, in the event the Pima County Board of Supervisors fails to appropriate sufficient funds to carry out the purposes of this Agreement, this Agreement automatically terminates. In the event of such termination, County has no further obligation to Foundation other than to return any unencumbered donated funds to Foundation.

16. Non-discrimination. Foundation agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this contract as if set forth in full herein including flow down of all provisions and requirements to any subcontractors. During the performance of this contract, Foundation will 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.

17. Severability. Each provision of this Agreement stands alone. Any provision of this Agreement found to be prohibited by law is ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

18. Entire Agreement, Modification. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all oral agreements, statements, representations, warranties, promises or understandings, whether oral or written. No party hereto will be charged to any statement or representation not specifically set forth in writing in this agreement. This Agreement may be modified only by an instrument in writing executed by all parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the dates written below.

Pima County:

Chair, Board of Supervisors

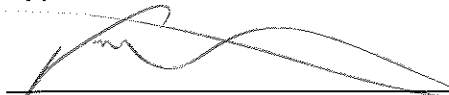
Date

Attest:

Clerk of the Board of Supervisors

Date

Approved as to Form:



Tobin Rosen, Deputy County Attorney, Civil Division

12/9/16

Date

Recommended for Approval:




Lisa Josker, Director, Pima County Facilities Management

12/9/16

Date

Foundation:



The Tucson January 8th Memorial Foundation

12/9/16

Date