



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

Requested Board Meeting Date: 2/21/17

or Procurement Director Award [ ]

Contractor/Vendor Name (DBA): Tucson January 8th Memorial Foundation

Project Title/Description:

Tucson January 8th Memorial Foundation and Tucson Medical Center Donation and Naming Agreement

Purpose:

To accept \$500,000 donation from Tucson Medical Center for the January 8th memorial

Procurement Method:

N/A

Program Goals/Predicted Outcomes:

To construct the January 8th memorial.

Public Benefit:

To provide a place to commemorate the January 8, 2011 tragedy.

Metrics Available to Measure Performance:

N/A

Retroactive:

N/A

Original Information

Document Type: CTN Department Code: FN Contract Number (i.e., 15-123): 17\*159

Effective Date: 02/21/2017 Termination Date: 02/20/37 Prior Contract Number (Synergen/CMS):

[ ] Expense Amount: \$ [ ] Revenue Amount: \$ 500,000

Funding Source(s): N/A

Cost to Pima County General Fund: N/A

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

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

Vendor is using a Social Security Number? [ ] Yes [X] 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:

Vertical stamp: PPR1517M0300BPC01K0F10

Handwritten notes: To: COB 2-15-17 (1) Ver. - 1 Pgs. - 12 Addendum

Procure Dept 02/15/17 PM03:00

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Contact: Stella Padilla

Department: County Administration

Telephone: 724-8229

Department Director Signature/Date: *E. Moulton*

Deputy County Administrator Signature/Date: *Tom Swick* 2-15-17

County Administrator Signature/Date: *C. R. Schubert* 2/15/17  
(Required for Board Agenda/Addendum Items)

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**Tucson's January 8<sup>th</sup> Memorial Foundation  
Donation and Naming Agreement**

This Donation and Naming Agreement ("Agreement"), effective as of February 21, 2017 ("Effective Date"), is entered into by and among **Tucson Medical Center**, an Arizona nonprofit corporation ("TMC"), **Tucson's January 8<sup>th</sup> Memorial Foundation, an Arizona nonprofit corporation** (the "Foundation"), and Pima County, a political subdivision of the State of Arizona (the "County").

**RECITALS**

- A. County is in the process of renovating the County courthouse constructed in 1928 located at 115 N. Church Avenue, Tucson (the "Historic County Courthouse").
- B. The Foundation has been collaborating with Pima County and the City of Tucson to develop a memorial (the "Memorial") in remembrance of the victims of the shooting that occurred in Tucson on January 8, 2011, to be located on the west and north side of the Historic County Courthouse, primarily on land owned by Pima County, but including some land owned by the City of Tucson.
- C. The Foundation has prepared a preliminary design of the Memorial and wants Pima County to complete the design and construct the Memorial. The preliminary design (the "Concept Design") is attached to this Agreement as **Exhibit A**.
- D. The Foundation wishes to donate or to cause to be donated funds to the County to be used to complete the design and construct the Memorial.
- E. TMC has donated \$500,000 (the "Donation") to the Foundation for the design and construction of the Memorial. TMC's donation was made with the understanding that the County will acknowledge that donation in accordance with Policy Number C3.19 of the Pima County Board of Supervisors as adopted on July 5, 2016 (the "Naming Policy"), a copy of which is attached as **Exhibit B**.
- F. The Foundation wishes to pass the TMC donation through to the County, and the County desires to accept that donation, subject to the terms and conditions set forth in this Agreement.

**AGREEMENT**

- 1. **Payment of the Donation.** The Foundation will pay the Donation to the County in one payment immediately upon the execution of this Agreement. The Foundation may make the payment via check, electronic funds transfer, stocks or other securities, or other methods acceptable to the Foundation and the County.
- 2. **Use of the Donation.** The Donation will be used by the County for the purposes described above and in a letter dated January 20, 2017, from TMC to the County, a copy of which is attached as **Exhibit C** to this Agreement. TMC acknowledges that the Memorial is still in the design development phase and acknowledges that final design and construction documents, which will be completed by the County, have not been started. During the preparation of the final design and construction documents, the County may 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. TMC also acknowledges that nothing in this Agreement obligates the the County to expend any funds for the planning, design or completion of the Memorial, other than funds contributed by the Foundation or others for that purpose.

3. **Acknowledgment.** In consideration for the Donation, and subject to the restrictions of the County's Naming Policy, the County will acknowledge the Donation by identifying TMC by name for the component of the Memorial to be known as the Memorial Garden (the "Naming") for a period of twenty (20) years.
4. **Termination of Naming.** In addition to any rights and remedies available at law, the County may terminate this Agreement and all rights and benefits of TMC hereunder, including terminating the Naming, if the Board of Supervisors determines in its reasonable and good faith opinion that circumstances have changed such that the Naming would adversely impact the reputation, image, mission or integrity of the County, the Memorial or the Foundation. Upon any such termination of this Agreement and/or the Naming, the Foundation and the County will have no further obligation or liability to TMC and will not be required to return any portion of the Donation already paid.
5. **Modification of Naming.** County reserves the right to modify, relocate, replace or remove the Memorial if the Board of Supervisors determines that this is in the public's best interest, or if the Memorial is severely damaged by casualty. The Naming will cease if the Memorial is transferred or conveyed by County to an agency or political subdivision of the State of Arizona or of the United States of America, closed, deconstructed, destroyed or severely damaged, significantly renovated, upgraded, modified, relocated, or replaced. If the Memorial is conveyed to another governmental agency as described above, the County will use reasonable efforts to have the other governmental agency maintain the Naming for the remainder of the twenty (20) years. The County will notify TMC in advance of any conveyance, modification, relocation or removal of the Memorial.
6. **Publicity.** For purposes of publicizing the Donation and the Naming, County will have the right, without charge, to photograph representatives of TMC and use the names, likenesses, and images of TMC in photographic, audiovisual, digital or any other form of medium (the "Media Materials") and to use, reproduce, distribute, exhibit, and publish the Media Materials in any manner, including in brochures, website postings, informational and marketing materials, and reports and publications describing County's activities.
7. **Notices.** Any notice required or permitted to be given under this Agreement must be in writing and be served by personal delivery or by certified mail upon the other party, addressed as set forth below, or to such other address as a party may from time to time designate by written notice to the other parties:

If to County: Pima County Administrator  
130 W. Congress Street, Floor 10  
Tucson, Arizona 85701

If to TMC: Vice President, Community Benefit  
5301 E. Grant Road  
Tucson, Arizona 85712

If to the Foundation: Executive Director  
PO Box 41502  
Tucson, Arizona 85717

8. **Assignment.** A party may not assign its rights or obligations under this Agreement without the prior written consent of the other parties, which consent may be withheld in the sole and absolute discretion of the non-assigning parties.
9. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with regard to the matters addressed, and supersedes all prior oral and written agreements, if any, of the parties. This Agreement may not be modified or amended except by written agreement executed by all the parties.
10. **Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of Arizona without regard to any conflict of laws rule or principle that might refer the governance or construction of this Agreement to the laws of another jurisdiction. Any legal proceeding brought in connection with disputes relating to or arising out of this Agreement will be filed and heard in Pima County, Arizona, and each party waives any objection that it might raise to such venue and any right it may have to claim that such venue is inconvenient.
11. **Cancellation for Conflict of Interest.** This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.

**Tucson Medical Center**

**Tucson's January 8<sup>th</sup> Memorial Foundation**

By: \_\_\_\_\_  
 Name: Julia Strange  
 Title: Vice President, Community Benefit

By: \_\_\_\_\_  
 Name: Crystal Kasnoff  
 Title: Executive Director

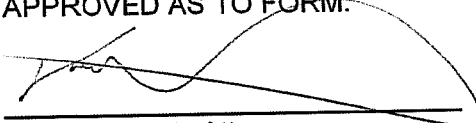
**Pima County**

By \_\_\_\_\_  
 Sharon Bronson, Chair  
 Board of Supervisors

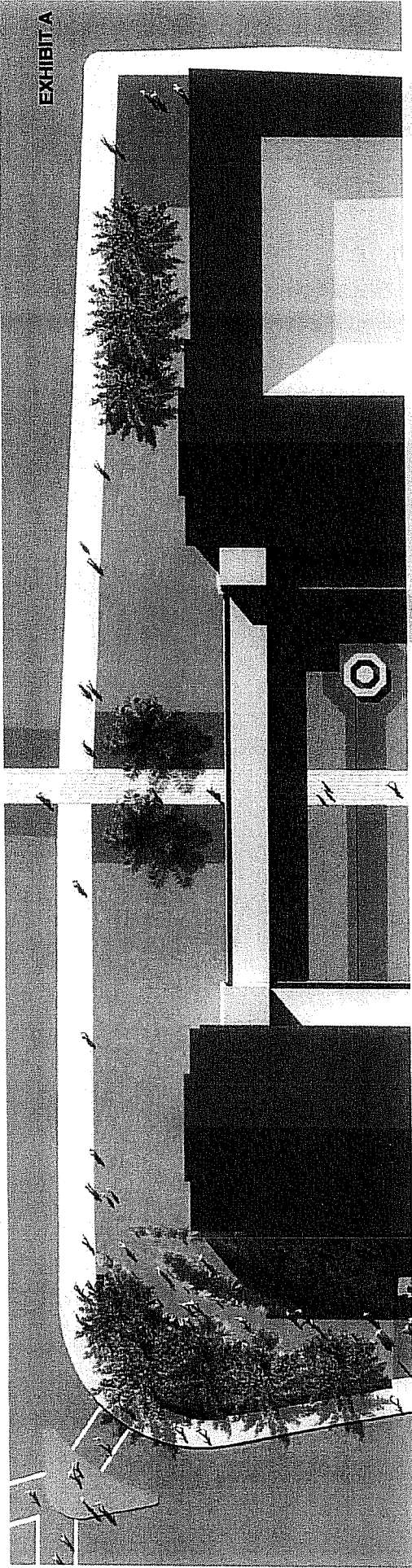
ATTEST:

\_\_\_\_\_  
 Clerk of the Board of Supervisors

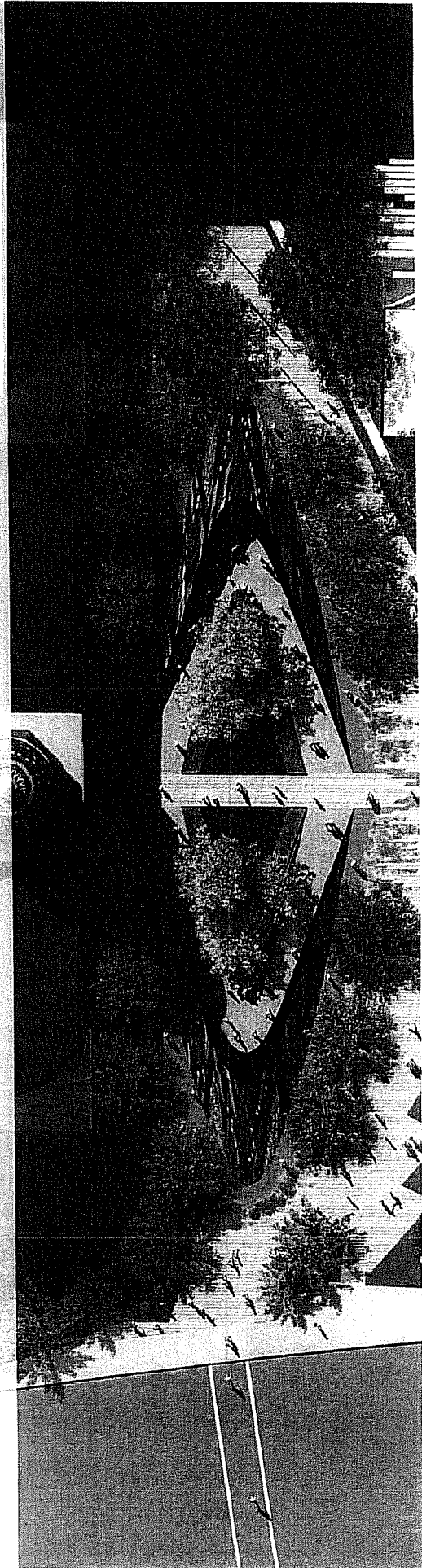
APPROVED AS TO FORM:

  
 \_\_\_\_\_  
 Deputy County Attorney  
**TOBIN ROSEN**

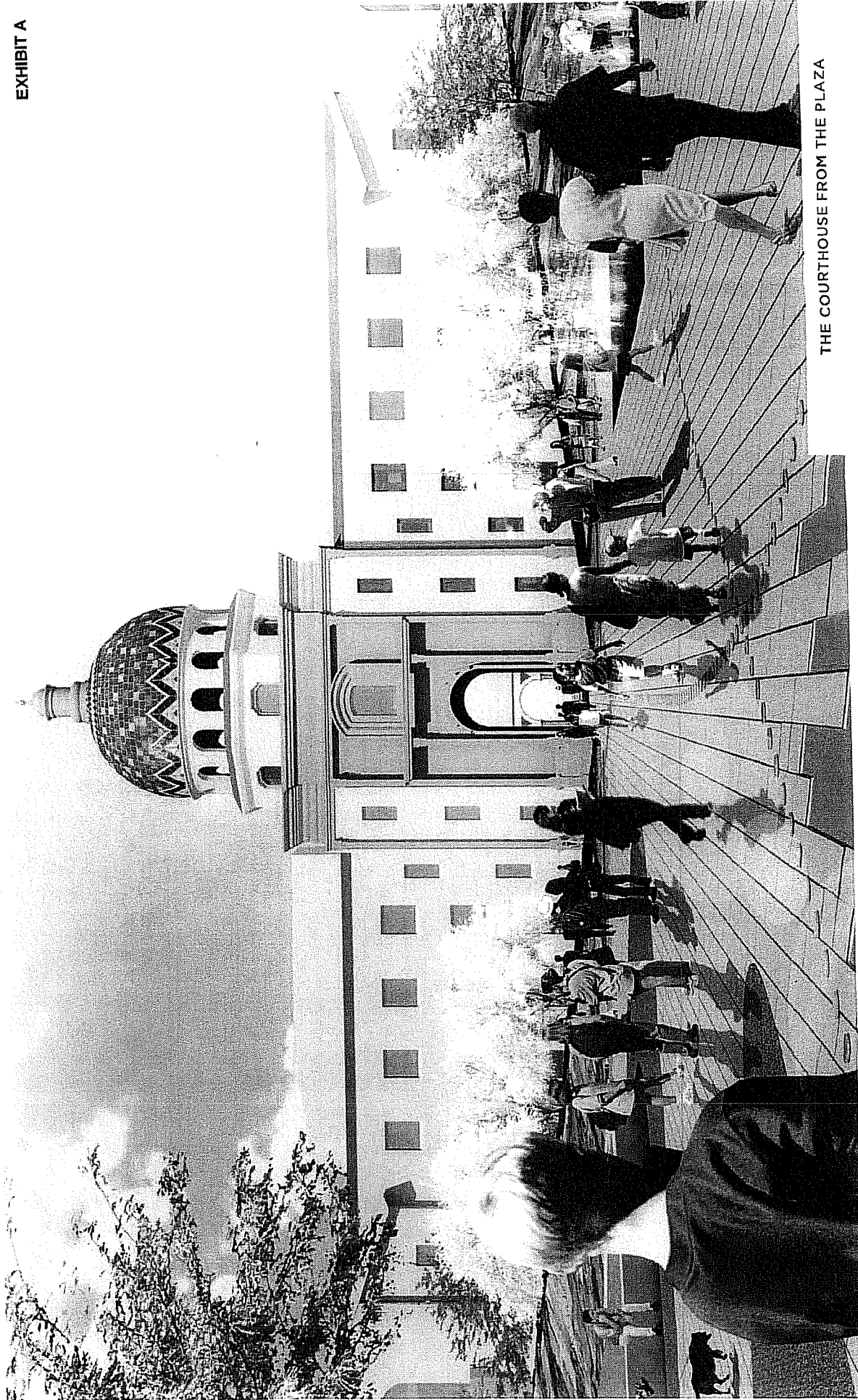
# EXHIBIT A



# JANUARY 8 MEMORIAL



THE CIVIC AXIS  
EXHIBIT A



THE COURTHOUSE FROM THE PLAZA



# EXHIBIT B



## PIMA COUNTY, ARIZONA BOARD OF SUPERVISORS POLICY

<b>Subject:</b> Naming of County Facilities and Programs	<b>Policy Number</b>	<b>Page</b>
	C 3.19	Page 1 of 3

### **Purpose:**

The purpose of this policy is to establish guidelines governing the conveyance, to financial contributors, of legally enforceable naming rights to County-owned or operated facilities and programs.

### **Background:**

While public facilities are dedicated to all citizens, the County sometimes chooses to name a facility, facility element, or program in a manner that honors a person for their financial generosity or non-monetary public contributions, with no related binding agreement with that person. This policy does not impact or in any way limit the Board's discretion to do that.

Sometimes, however, a financial contributor may, as a condition of making a substantial grant or donation, require the County to make a legally binding naming commitment. In addition, the County may choose to create programs that encourage the making of smaller financial contributions in exchange for installation in County facilities of engraved bricks or tiles, or installation of recognition plaques on fixtures such as benches, kennels, or pathway segments. This policy is intended to govern grants of enforceable naming rights to private parties.

### **Definitions:**

As used in this Policy:

- A "Facility" is a Pima County-owned or operated building, structure, thoroughfare, or park in its entirety.
- A "Facility Element" is a component of, or a sub-area within or associated with, a Facility. Facility Elements include, but are not limited to, exterior landscaped areas, open areas, and plazas; interior meeting rooms, atriums, and offices; benches, equipment, furnishings, and other fixtures; and segments of roads, paths, walkways, and other thoroughfares.
- A "Program" is any public service, operation, event, or series of events that is provided, performed, or sponsored by the County, and any individual unit or units within an ongoing service or operation or a series of events.
- A "Donor" is a person who donates money, goods, or services to the County in exchange for Naming Rights.
- "Naming Rights" means a binding agreement by the County to (1) designate and refer to a Facility, Facility Element, or Program, by a name or title designated by a Donor, such as in announcements and written materials, and/or (2) mount or imbed on a Facility or Facility Element, a sign, plaque, tile, brick, or other item containing a name or other text designated by a Donor.



## PIMA COUNTY, ARIZONA BOARD OF SUPERVISORS POLICY

<b>Subject:</b> Naming of County Facilities and Programs	<b>Policy Number</b>	<b>Page</b>
	C 3.19	Page 2 of 3

### Policy:

The County Administrator is authorized to develop programs for the granting of Naming Rights in order to recognize Donors who provide financial assistance—whether in the form of a one-time grant or a commitment to make continuing periodic contributions—with the construction or installation of a County Facility or Facility Element, or for the implementation or maintenance of a County Program. This may include multiyear Naming Rights for entire Facilities and Programs, as well as smaller-scale Naming Rights for Facility Elements. The programs must be consistent with the following general guidelines:

1. The scope of the Naming Right—in terms of the scale and prominence of the Facility, Facility Element or Program with respect to which the Naming Right is granted—and its duration, should correspond to the scale of the financial assistance provided by the Donor. No Naming Right may last for more than 20 years.
2. A Naming Right that applies to an entire Facility or Program, or that is for more than 5 years (unless terminable at will by the County), must be competitively marketed to multiple potential donors before being conveyed, and any such conveyance must be approved in advance by the Board of Supervisors.
3. The specific nature, scope, and duration of the Naming Right must be memorialized in a written agreement with the Donor, the form of which has been reviewed and approved by the Civil Division of the County Attorney's Office.
4. As part of each program, procedures must be implemented to administer and track Naming Rights that have been granted.
5. The proposed conveyance of Naming Rights involving any improvement funded in whole or in part with the proceeds of tax-exempt bonds, which bonds are still outstanding in whole or in part, must be reviewed and approved by the Director of the Finance and Risk Management Department, to ensure there is no impact on the tax-exempt status of the bonds.
6. To the extent possible, the agreement with the Donor should preserve the County's flexibility to make changes to Facilities, Facility Elements, and Programs in order to serve the public interest.
7. The name or other text chosen by the Donor must be (1) either (a) the true name of one or more persons or of an organization *other than* an organization whose principle function is to advocate for or against a person running for elected office or influence political or policy decisions, or (b) other text that is not obscene, misleading, defamatory, or disruptive; and (2) sufficiently brief so as to fit within the space available. The County has sole authority to determine and assure compliance with this item and to select the text's font size, style, and color.



## PIMA COUNTY, ARIZONA BOARD OF SUPERVISORS POLICY

<b>Subject:</b> Naming of County Facilities and Programs	<b>Policy Number</b>	<b>Page</b>
	C 3.19	Page 3 of 3

8. No Naming Right may include the conveyance of any proprietary or ownership interest in any County property or any special, preferential, or exclusive right to utilize any Facility or Facility Element (except for the purpose of the displaying the Donor's name).
9. No Naming Right may be granted in a manner that creates a conflict of interest or the appearance of a conflict of interest.

### **Implementation:**

The County Administrator shall develop and distribute administrative procedures governing the conveyance of Naming Rights consistent with this Policy.

Adoption Date: July 5, 2016  
Effective Date: July 5, 2016

# EXHIBIT C



January 20, 2017

Mr. Tom Burke  
Pima County Administration  
130 W. Congress, 10<sup>th</sup> Floor  
Tucson, Arizona 85701

**Subject: Donation by Tucson Medical Center for the Tucson January 8<sup>th</sup> Memorial**

Dear Mr. Burke,

Tucson Medical Center is very pleased to provide a significant donation for the design and construction of the Tucson January 8<sup>th</sup> Memorial, and this letter is to acknowledge Pima County's receipt of Tucson Medical Center's donation, through Tucson's January 8<sup>th</sup> Memorial Foundation, in the amount of \$500,000.

The intent of our donation is to sponsor the "Memorial Gardens Walk," as a 20-year naming opportunity, and to fund the Construction Documents and Construction Phases of the January 8<sup>th</sup> Memorial. We understand this donation will be placed in a restricted account, "the January 8<sup>th</sup> Memorial Fund," in accordance with the Agreement between Pima County and the Tucson January 8<sup>th</sup> Memorial Foundation.

Upon receipt of our donation to Pima County, we would appreciate your acknowledgment of this donation by signing below. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Julia Strange  
Vice President, Community Benefit

*I acknowledge receipt of a donation of \$500,000 from Tucson Medical Center for the design and construction of the Tucson January 8<sup>th</sup> Memorial.*

\_\_\_\_\_  
Tom Burke, Deputy Pima County Administrator / Date