



Contract Number: CT-TR-14\*391  
Effective Date: 5-6-14  
Term Date: 3-1-2017  
Cost: 135,000. -  
Revenue: \_\_\_\_\_  
Total: \_\_\_\_\_ NTE: \_\_\_\_\_  
Renewal By: 12-1-2016  
Term: 3-1-2017  
Reviewed by: VL

## BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: May 6, 2014

### **ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:**

This contract funds artist Daniel Martin Diaz, in the amount of \$135,000 to provide artist services and artwork for the Sunset Road Improvement Project. Board policy C.3.3 allocates 1% of capital construction costs for public art. Mr. Diaz was selected through an open and competitive process in accordance with Administrative Procedure 3-16.

Procure Dept 04/10/14 PM/CL

CONTRACT NUMBER (If applicable): CT 14\*391

### **STAFF RECOMMENDATION(S):**

*Staff recommends that the Board approve the contract.*

CORPORATE HEADQUARTERS: NA

Page 1 of 2

Ver. 1

Vendor. 1

To: C03-423-14  
Agenda - 5-6-14  
(2)

Pgs. 11

**CLERK OF BOARD USE ONLY: BOS MTG. \_\_\_\_\_**

**ITEM NO. \_\_\_\_\_**

**PIMA COUNTY COST: \$135,000 and/or REVENUE TO PIMA COUNTY:\$ 0**

**FUNDING SOURCE(S): RTA (36%) DIF (64%)**  
(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

**Advertised Public Hearing:**

YES

NO

**Board of Supervisors District:**

**IMPACT:**

**IF APPROVED:**

*Funds will be used to provide public art for the Sunset Road improvement project.*

**IF DENIED:**

*Funds will not be used to provide public art for the Sunset Road improvement project.*

**DEPARTMENT NAME:** Transportation

**CONTACT PERSON:** Jonathan Crowe **TELEPHONE NO.:** 724-6383

PROFESSIONAL SERVICES CONTRACT - Procurement Director

This CONTRACT is entered into between Pima County, a body politic, and corporate of the State of Arizona, hereinafter called COUNTY; and Daniel Martin Diaz hereinafter called ARTIST.

WITNESSETH

WHEREAS, the COUNTY supports the arts and benefits the public by incorporating artwork into its public improvement projects, pursuant to the Pima County Public Art Program (Board of Supervisors Policy C3.3 and Pima County Administrative Procedure 3-16); and

WHEREAS, the COUNTY intends to incorporate public art into the design and construction of Sunset Road improvements hereinafter called PROJECT; and

WHEREAS, pursuant to the COUNTY's Public Art Program, the Tucson/Pima Arts Council conducted a "call to artists," and subsequently a selection panel recommended that the COUNTY incorporate the ARTIST'S work into the PROJECT.

NOW, THEREFORE, the parties hereto agree as follows:

## **ARTICLE I - TERM AND EXTENSION/RENEWAL**

This Contract shall commence on the date that it is fully executed by the parties and shall terminate on March 1, 2017, unless sooner terminated or further extended for the purposes of completing the work to be provided by the ARTIST under this Contract. The Contract can be extended as required to complete the intended work provided that any modification or extension shall be by formal written amendment executed by the parties hereto.

Amendments and changes must be approved by the Procurement Director or the County Board of Supervisors, as required by the Pima County Procurement Code, before the work authorized by the changes is performed.

## **ARTICLE II – SCOPE OF SERVICES**

The ARTIST shall provide the artist services and artwork described in the attached **EXHIBIT 'A': SCOPE OF WORK**, hereinafter called ARTWORK.

ARTIST shall perform the work in accordance with the terms of the Contract and to the best of ARTIST'S ability. ARTIST shall employ suitably trained and skilled professional personnel to perform all services

under this Contract, subject to Article XXIV of this Contract and the Legal Arizona Worker's Act.

### **ARTICLE III - PAYMENT**

In consideration of the services specified in this Contract, the COUNTY agrees to pay ARTIST one hundred thirty five thousand dollars (\$135,000.00) for design, fabrication and installation of ARTWORK. This amount shall be paid as provided in **EXHIBIT 'B': PAYMENT**.

### **ARTICLE IV - INSURANCE**

ARTIST shall obtain and maintain at its own expense, during the entire term of this Contract the following type(s) and amounts of insurance:

- a) Commercial General Liability in the amount of \$1,000,000.00 combined, single limit Bodily Injury and Property Damage. COUNTY is to be named as an additional insured for all operations performed within the scope of the Agreement between COUNTY and ARTIST. The coverage may be restricted to the period in which the ARTIST is performing work at the PROJECT site.
- b) Commercial or Business Automobile Liability will be waived if ARTIST agrees that, in consideration of the waiver of the Commercial Auto coverage, that travel will be limited to coming and going exclusively to and from the job site and/or meeting location, with no deviations. ARTIST agrees that failure to comply with this requirement indemnifies the COUNTY against any bodily injury or property damage claims resulting from an accident.
- c) ARTIST is performing work as an independent contractor for COUNTY. ARTIST shall provide COUNTY with a completed Workers' Compensation Insurance Waiver Form prior to any work being performed by ARTIST.

ARTIST shall provide COUNTY with current certificates of insurance. All certificates of insurance must provide for guaranteed thirty (30) days written notice of cancellation, non-renewal or material change.

### **ARTICLE V - INDEMNIFICATION**

ARTIST shall indemnify, defend, and hold harmless COUNTY, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising from, in connection with or caused by: (a) any personal injury or property damage caused, directly or indirectly, by any act or omission of ARTIST; or (b) any infringement of patent, copyright, trademark, trade secret or other proprietary right caused by ARTIST in connection with performance of this Contract.

### **ARTICLE VI - COMPLIANCE WITH LAWS**

The ARTIST shall 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 shall govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract shall be brought 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 shall apply, but do not require an amendment.

### **ARTICLE VII - INDEPENDENT CONTRACTOR**

The status of the ARTIST shall be that of an independent contractor. Neither ARTIST, nor ARTIST'S officers, agents, nor employees shall be considered an employee of COUNTY or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. ARTIST shall be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract, and shall indemnify and hold COUNTY harmless from any and all liability that

COUNTY may incur because of ARTIST'S failure to pay such taxes. ARTIST shall be solely responsible for program development and operation.

#### ARTICLE VIII - SUBCONTRACTOR

ARTIST will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that ARTIST is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract shall create any obligation on the part of COUNTY to pay or see to the payment of any money due any subcontractor, except as may be required by law.

#### ARTICLE IX - ASSIGNMENT

ARTIST shall not assign its rights to this Contract, in whole or in part, without prior written approval of the COUNTY. Approval may be withheld at the sole discretion of the COUNTY, provided that such approval shall not be unreasonably withheld.

#### ARTICLE X - NON-DISCRIMINATION

ARTIST agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website [http://www.azgovernor.gov/dms/upload/EO\\_2009\\_09.pdf](http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf) which is hereby incorporated into this contract as if set forth in full herein. During the performance of this contract, ARTIST 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.

#### ARTICLE XI - AMERICANS WITH DISABILITIES ACT

ARTIST shall comply with 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.

#### ARTICLE XII-AUTHORITY TO CONTRACT

ARTIST 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 shall not be liable to ARTIST or any third party by reason of such determination or by any reason of this Contract.

#### ARTICLE XIII - FULL AND COMPLETE PERFORMANCE

The failure of either party to insist on one or more instances upon the full and complete performance with 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, 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. The acceptance by either party of the sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.

#### ARTICLE XIV - CANCELLATION FOR CONFLICT OF INTEREST

This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into and made part of this Contract by reference.

## ARTICLE XV - OWNERSHIP OF ARTWORK

- a. Ability of COUNTY to Alter ARTWORK. The COUNTY, having expended considerable public funds to commission the ARTWORK, intends to display the ARTWORK at the PROJECT site as originally created by ARTIST and to maintain the ARTWORK in good condition. Public artworks commissioned by the COUNTY are sometimes integrated into the overall project, such that they become an integral, permanent and site-specific part of the project's or facility's structure, architecture or landscaped environment, and a modification or change in the project or facility would result in significant changes to the artwork. COUNTY, however, must preserve complete flexibility to operate and manage COUNTY property in the public's interest. Therefore, COUNTY retains the right to alter, remove or destroy the ARTWORK in connection with any repair, maintenance, change or modification of the overall PROJECT or public facility, under the conditions set forth below.
- b. Procedure in Event of Alteration. If COUNTY intends to take any action with respect to the PROJECT or the ARTWORK that would alter the ARTWORK, other than routine cleaning and maintenance, the following procedures shall apply:
  - (1) Notice. If time permits, COUNTY shall make reasonable good faith efforts to notify ARTIST at least 20 calendar days prior to authorizing any alteration of the ARTWORK, at the last phone number or address provided by ARTIST to the COUNTY. Where time does not permit notification prior to alteration of the ARTWORK – for example, in cases of public hazard, accident or unauthorized alteration – COUNTY shall notify ARTIST within 30 calendar days after such alteration.
  - (2) Consultation. After receiving such notice, ARTIST shall consult with COUNTY to determine whether the ARTWORK can be restored or relocated, and attempt to come to a mutually agreeable plan for disposition of the ARTWORK. Such consultation shall be without charge by ARTIST unless otherwise specifically agreed in writing. If COUNTY intends to remove the ARTWORK, ARTIST shall consult regarding methods to minimize or repair any alteration to the ARTWORK caused by such removal and the potential costs of such removal.
  - (3) Restoration. If the ARTWORK is altered, with or without prior notice to ARTIST, and COUNTY intends to maintain the ARTWORK on display, COUNTY shall make a reasonable good faith effort to engage ARTIST in the restoration of the ARTWORK and to compensate ARTIST for ARTIST'S time and efforts at fair market value, which may be the subject of a future agreement between ARTIST and COUNTY. However, COUNTY has no obligation under this Agreement to restore the ARTWORK to its original condition, to compensate ARTIST for any restoration work, or to maintain the ARTWORK on display. If ARTIST fails or refuses to negotiate with COUNTY in good faith with respect to any restoration, COUNTY may contract with any other qualified art conservator or artist for such restoration. During ARTIST'S lifetime, COUNTY shall make best efforts not to display or deaccession only a portion of the ARTWORK without ARTIST'S consent.
  - (4) Removal by ARTIST. If time permits, if COUNTY intends to take an action that will destroy the ARTWORK, such as destruction of all or part of the PROJECT site, and COUNTY determines that it will not remove and preserve the ARTWORK itself, COUNTY shall allow ARTIST to remove the ARTWORK at ARTIST'S expense within 30 days of notice from the COUNTY of the need to remove the ARTWORK, in which case title to the ARTWORK shall revert to ARTIST. If ARTIST fails to remove the ARTWORK within that 30 day period, COUNTY may destroy the ARTWORK.
- c. Remedies. If COUNTY breaches any of its obligations under this Section, ARTIST'S remedies shall be limited as follows: If COUNTY inadvertently fails to provide a required prior notice of alteration, COUNTY will provide notice as soon as it discovers the omission, and before alteration of the ARTWORK if that remains possible. If COUNTY alters the ARTWORK without providing ARTIST a required prior notice of alteration, ARTIST shall be given the first right of refusal to restore the ARTWORK at the same location and COUNTY shall make reasonable efforts to provide funding for

the restoration. If COUNTY funds cannot be made available after reasonable efforts are made to secure such funding, ARTIST may, but is not obligated to, restore the ARTWORK at ARTIST'S expense. If ARTIST elects not to restore the ARTWORK, COUNTY may retain another artist or conservator to restore it, or may alter the ARTWORK in any manner, at COUNTY'S sole discretion. If COUNTY alters the ARTWORK without ARTIST'S consent in a manner that is prejudicial to ARTIST'S reputation, ARTIST retains the right to disclaim authorship of the ARTWORK in accordance with 17 U.S.C. §106A (a) (2).

d. Third Parties. Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, successors or assigns of COUNTY, ARTIST retains ARTIST'S moral rights in the ARTWORK, as established in the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)) or any other local, state, federal or international moral rights laws that protect the integrity of works of art. Accordingly, nothing herein shall prevent ARTIST from pursuing a claim for alteration of the ARTWORK against a third party who is not an officer, employee, agent, successor or assign of COUNTY. COUNTY has no obligation to pursue claims against third parties to remedy or prevent alteration of the ARTWORK. However, as owner of the ARTWORK, COUNTY may pursue claims against third parties for damages or to restore the ARTWORK if the ARTWORK has been altered without COUNTY'S authorization.

#### ARTICLE XVI - COPYRIGHT

a. Copyright. Subject to usage rights and licenses granted to COUNTY hereunder, ARTIST shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement. ARTIST'S copyright shall not extend to predominantly utilitarian aspects such as landscaping elements, furnishings, or other similar objects. If ARTIST is comprised of two or more individual persons, the individual persons shall be deemed joint authors of the ARTWORK.

b. COUNTY'S Intellectual Property License. ARTIST grants to COUNTY and to COUNTY'S agents, authorized contractors and assigns, an unlimited, non-exclusive and irrevocable license to do the following with respect to the ARTWORK, and any original works of authorship created under this Agreement, whether in whole or in part, in all media (including electronic and digital).

- (1) Implementation, Use and Display. COUNTY may use and display the ARTWORK.
- (2) Reproduction and Distribution. COUNTY may make and distribute, and authorize the making, display and distribution of, photographs and other 2-dimensional reproductions of the ARTWORK. COUNTY may use such reproductions for any COUNTY-related purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, and catalogues or similar publications. The license granted hereunder does not include the right to create 3-dimensional reproductions on items such as tote-bags, T-shirts, coffee mugs and similar merchandise. Such reproductions may only be created pursuant to separate license agreements with ARTIST.
- (3) Public Records Requests. Any documents provided by ARTIST to COUNTY are public records and COUNTY may authorize third parties to review and reproduce such documents pursuant to public records laws.

c. Publicity. COUNTY shall have the right to use ARTIST'S name, likeness, and biographical information, in connection with the display or reproduction and distribution of the ARTWORK including all advertising and promotional materials regarding COUNTY. ARTIST shall be reasonably available to attend any inauguration or presentation ceremonies relating to the public dedication of the ARTWORK.

#### ARTICLE XVII - WARRANTY

ARTIST warrants that the ARTWORK is an original production of ARTIST'S own creative efforts, that upon delivery the ARTWORK shall be free of all liens, claims and encumbrances of any sort, and that the

ARTWORK is unique and will not be physically reproduced by ARTIST for sale or display elsewhere without the express written permission of COUNTY.

ARTIST shall warranty the work to be free from defects in material and workmanship for a period of two years from date of Final Acceptance by Owner. Warranty does not cover damage from theft, fire, vandalism or acts of God. Should defects develop within the warranty period as a result of poor material and/or workmanship, ARTIST shall repair or replace all work to the satisfaction of COUNTY without cost to COUNTY.

#### ARTICLE XVIII-TERMINATION

COUNTY reserves the right to terminate this Contract at any time and without cause by serving upon ARTIST 30 days advance written notice of such intent to terminate. In the event of such termination, the COUNTY'S only obligation to ARTIST shall be payment for services rendered prior to the date of termination.

This Contract may be terminated at any time without advance notice and without further obligation to the COUNTY when the ARTIST is found to be in default of any provision of this Contract.

Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining COUNTY or other public entity obligations under this Contract. In the event of such termination, COUNTY shall have no further obligation to ARTIST, other than to pay for services rendered prior to termination.

#### ARTICLE XIX - NOTICE

Any notice required or permitted to be given under this Contract shall be in writing and shall be served by personal delivery or by certified mail upon the other party as follows:

Pima County	Artist
Jason Bahe, Project Manager Pima County Transportation Dept., 4th floor 201 N. Stone Avenue Tucson AZ 85701 (520) 724-6522	Daniel Martin Diaz 7003 S. Catchfly Court Tucson, AZ, 85756 520-790-0838 pdiaz3@cox.net
Copy: Jonathan Crowe, Principal Planner Department of Transportation, 5 <sup>th</sup> floor 201 N. Stone Avenue Tucson AZ 85701 (520) 724-6383	

#### ARTICLE XX - NON-EXCLUSIVE CONTRACT

ARTIST understands that this Contract is nonexclusive and is for the sole convenience of COUNTY. COUNTY reserves the right to obtain like services from other sources for any reason.

#### ARTICLE XXI - REMEDIES

Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy 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 existing at law or at equity or by virtue of this Contract.

#### ARTICLE XXII- SEVERABILITY

Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

### **ARTICLE XXIII - BOOKS AND RECORDS**

ARTIST shall keep and maintain proper and complete books, records and accounts, which shall be open at all reasonable times for inspection and audit by duly authorized representatives of COUNTY.

In addition, ARTIST shall retain all records relating to this contract at least 5 years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

### **ARTICLE XXIV – LEGAL ARIZONA WORKERS ACT COMPLIANCE**

ARTIST hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to ARTIST'S employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). ARTIST shall further ensure that each subcontractor who performs any work for ARTIST under this contract likewise complies with the State and Federal Immigration Laws.

COUNTY shall have the right at any time to inspect the books and records of ARTIST and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of ARTIST'S or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting ARTIST to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, ARTIST shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, (subject to COUNTY approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

ARTIST shall advise each subcontractor of COUNTY'S rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"SUBCONTRACTOR hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to SUBCONTRACTOR's employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONTRACTOR further agrees that COUNTY may inspect the SUBCONTRACTOR'S books and records to insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR will be deemed to be a material breach of this contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of ARTIST. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of ARTIST's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which ARTIST shall be entitled to an extension of time, but not costs.

### **ARTICLE XXV – SCRUTINIZED BUSINESS OPERATIONS**

"Pursuant to A.R.S. §§ 35-391.06 and 393.06, contractor hereby certifies that it does not have scrutinized business operations in Iran or Sudan. The submission of a false certification by contractor may result in action up to and including termination of this contract.

### ARTICLE XXVI- ENTIRE AGREEMENT

This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written amendment signed by the parties.

IN WITNESS WHEREOF, the parties have affixed their signatures to this Contract on the dates written below.

#### **PIMA COUNTY:**

Chair, Board of Supervisors

Date: \_\_\_\_\_

#### **ATTEST:**

Clerk of Board

Date: \_\_\_\_\_

#### **APPROVED AS TO FORM:**

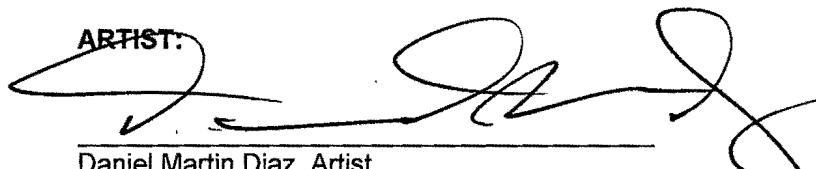
  
Deputy County Attorney

**HAL GILBREATH**

Print DCA Name

Date: 3-25-14

**ARTIST:**

  
Daniel Martin Diaz, Artist

Date: 3-26-14

## EXHIBIT 'A'

### SCOPE OF WORK

#### **Artist Services for Sunset Road Improvement Project**

During the term of this Agreement, the artist consultant, Daniel Martin Diaz (ARTIST) shall perform professional services for Pima County (COUNTY) in connection with the above referenced project. This scoping document shall be used to plan, conduct, and complete the ARTIST work on the project.

#### **I. Design Phase**

- A. Upon execution of this contract, ARTIST shall meet with COUNTY staff and project manager(s) to review opportunities and constraints, discuss possible designs, and identify appropriate areas as possible sites for ARTWORK.
- B. ARTIST shall work cooperatively with COUNTY, design team, contractors, and the local community as represented by the Community Advisory Committee, if applicable. It is understood that the process of developing, reviewing, and approving an ARTWORK for the COUNTY is an open and transparent process which may include public participation and scrutiny.
- C. ARTIST shall prepare conceptual designs for the ARTWORK, and shall submit these concepts to COUNTY staff and project manager for review prior to the public. The conceptual design submittal shall include information about the content, scale, location, context, relationship of components, and materials of the proposed ARTWORK.
- D. ARTIST shall submit a budget which explains how the contract amount shall be expended. Budget shall include a list of art elements with corresponding budget, the projected allocation of responsibilities and activities related to design, production and installation of the elements, and a timeline. This budget, once accepted by the Project Manager, shall become part of this agreement.
- E. The proposed conceptual design shall be reviewed by the COUNTY Risk Manager, who may require that the ARTIST make safety-related modifications before submitting to public review. ARTIST shall respond within a reasonable amount of time to the COUNTY's requests for written decisions or determinations, pertaining to the project, so as not to delay the project. ARTIST agrees to address COUNTY's comments and modification requirements prior to final review and approval. ARTIST shall give prompt written notice to the COUNTY whenever the ARTIST becomes aware of an event, occurrence, condition or circumstance, which may substantially affect the project or the project team's performance.
- F. Once conceptual design and budget has been reviewed and accepted by COUNTY, ARTIST shall present designs of the proposed ARTWORK at up to three (3) public meetings to gather input and select a final design including review by the Artist Selection Panel. ARTIST shall be available with reasonable advance notice for meetings, as necessary. ARTIST shall document community and design team input, feedback and outcomes.
- G. Once a final design has been selected, ARTIST shall prepare final design drawings, specifications, and materials samples, and shall submit these to COUNTY for review and approval including review by Risk Management. Where applicable, ARTIST shall provide structural engineering drawings.
- H. ARTIST shall submit to COUNTY electronic images of the proposed ARTWORK to be used in COUNTY's website and other means of public information.
- I. If ARTWORK is integrated into roadway project construction plans, ARTIST shall provide detailed construction drawings with sufficient detail to install ARTWORK using standard construction methods. ARTIST shall coordinate with the Project Team to prepare and finalize drawings and specifications that Design Engineer can include in the roadway design plans.
- J. The Project Manager will provide ARTIST with the following coordination support:

1. Assisting and cooperating with ARTIST in completing the Scope of Services in a timely and effective manner; including assisting ARTIST with preparation of budgets, visual materials for public meetings; documenting ARTWORK into the construction documents, if needed. If ARTWORK is incorporated into the roadway design documents, the Design Engineer and all its sub-consultants may provide engineering services at their discretion. Unless otherwise agreed, ARTIST is responsible to obtain, coordinate and document engineering requirements.
2. Designating a representative who shall have authority to transmit instructions, receive information and enunciate Engineer's policies and decisions.
3. Arranging required meetings for presentations.
4. Making available to ARTIST existing information, which may be pertinent to the Scope of Services described herein.
5. Responding within a reasonable time to ARTIST requests for written decisions or determinations, pertaining to the Scope of Services, so as not to delay the services of the ARTIST.
6. Giving prompt written notice to ARTIST whenever the Engineer becomes aware of an event, occurrence, condition or circumstance, which may substantially affect ARTIST performance of her Scope of Services under this Agreement.

### **III. Fabrication and Installation**

- A. ARTIST must receive written approval from COUNTY of the Final Design of the ARTWORK before proceeding with fabrication and installation. ARTIST shall cause the ARTWORK to be fabricated in substantial conformity with the approved Final Design and, if applicable, approved engineering and construction documents.
- B. ARTIST shall be available with reasonable advance notice for meetings, as necessary to review construction plans and specifications, and for field reviews.
- C. ARTIST shall direct any necessary modifications or revisions to the ARTWORK as requested by the COUNTY for a proper and structurally sound installation.
- D. If ARTIST fabricates any portion of the ARTWORK themselves, ARTIST is responsible for delivery of ARTWORK to the site and shall coordinate with the Project Manager. Upon delivery, COUNTY shall accept all responsibility and rights to ownership of ARTWORK.
- E. ARTIST shall direct the fabrication, delivery and installation of ARTWORK to coordinate with scheduled roadway construction activities.
- F. ARTIST shall provide and install, at their own expense, a plaque on or near the ARTWORK stating the title, ARTIST name, date, and other details as determined by the ARTIST and COUNTY, subject to approval by the Tucson Pima Arts Council and COUNTY prior to installation.
- G. ARTIST shall participate in a ceremony to dedicate the roadway project, if requested.
- H. When ARTWORK is completed, ARTIST shall provide the Tucson Pima Arts Council and the COUNTY a recommended annual maintenance protocol and schedule describing the media and techniques used to produce and install the ARTWORK the frequency of maintenance; materials and methods to be used; and an estimate of the costs of maintenance and preservation of the ARTWORK.
- I. When ARTWORK is completed, ARTIST shall provide a minimum of (6) digital images and (6) 8" x 10" color prints of the completed and installed ARTWORK to the Tucson Pima Arts Council and COUNTY.

**EXHIBIT 'B'**

**PAYMENT**

**Artist Services for Sunset Road Improvement Project**

- A. In consideration of the performance and service described in the Scope of Services, COUNTY shall pay ARTIST the estimated amounts as set forth below and ARTIST shall charge COUNTY only in accordance with those same amounts. Total payment for services provided during the term of this Contract shall not exceed one hundred thirty five thousand dollars (\$135,000.00).
- B. During the design phase, ARTIST shall be paid for design services including those of ARTIST sub-consultants. ARTIST shall submit invoices to COUNTY with documentation that accurately defines progress towards completion of tasks, and the ARTIST'S estimate of the percentage of the task that is completed at the date of the submission.
- C. It is estimated that that no more than 30% of the total contract, or six thousand dollars (\$40,500.00) will be expended for design. Allowable costs include design time, materials for models/presentations, and labor. Only with prior authorization from the Project Manager shall additional funds be expended during the design phase.
- D. It is estimated that no more than 70% of the total contract, or thirteen thousand dollars (\$94,500.00) will be expended on ARTWORK materials, fabrication, transportation and installation. ARTIST shall submit itemized invoices for services based upon the mutually agreed upon schedule and final design plans provided at the 100% design milestone.
- E. COUNTY will retain 10% of the total contract amount until ARTIST has submitted the required plaque, maintenance protocol, final photos and the ARTWORK has been certified complete.