



Contract Number: CT-PCA-15*141
 Effective Date: 9-1-14
 Term Date: 8-31-15
 Cost: \$50,000.-
 Revenue: _____
 Total: _____ NTE: _____
 Action
 Renewal By: _____
 Term: 6-1-15
 Reviewed by: VP 8-31-15

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: 12/2/14

ITEM SUMMARY, JUSTIFICATION & /or SPECIAL CONSIDERATIONS:

The Office of the Pima County Attorney is requesting approval to enter into a contract agreement with Kathryn Kellner dba Kellner Studio, from September 1, 2014 through August 31, 2015. Kathryn Kellner will be providing presentation skills and communication strategy professional services for the County Attorney's Office. The amount of the contract for this period shall not exceed \$50,000.00 and will be primarily be funded from non-general sources.

CONTRACT NUMBER (If applicable): CT-PCA-150000000000000000141

STAFF RECOMMENDATION(S):

Schedule for approval on the Board of Supervisor's meeting agenda of 12/2/14

CORPORATE HEADQUARTERS: _____

Ver.-1
 Vendor-1
 Pgs-10

To: CoB. 11-19-14
 Agenda. 12-2-14

Procure Dept 11/17/14 AM 10:08

CLERK OF BOARD USE ONLY: BOS MTG. _____

ITEM NO. _____

PIMA COUNTY COST: \$50,000.00 and/or REVENUE TO PIMA COUNTY:\$

FUNDING SOURCE(S): Special Revenue
(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

		YES	X	NO
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Board of Supervisors District:

1		2		3		4		5		All	X
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IMPACT:

IF APPROVED: The Office of the Pima County Attorney will be able to provide special services that provide presentation and strategic communication skills.

IF DENIED: The Office of the Pima County Attorney will be unable to provide special services that provide presentation and strategic communication skills.

DEPARTMENT NAME: Pima County Attorney's Office

CONTACT PERSON: Angelique Griffith TELEPHONE NO.: 740-4077

PIMA COUNTY ATTORNEY'S OFFICE
PROJECT: Presentation Skills & Communication Strategies Consultant
CONTRACTOR: Kathryn Kellner dba Kellner Studio
3736 N. Jackson
Tucson, AZ 85719
AMOUNT: \$50,000.00
FUNDING: NON-GENERAL FUNDING SOURCES

CONTRACT
NO. CT-PCA-15000000000000000000/14
AMENDMENT NO. _____
This number must appear on all invoices, correspondence and documents pertaining to this contract.

(STAMP HERE)

PROFESSIONAL SERVICES CONTRACT - Board of Supervisors

THIS CONTRACT entered between Pima County, a body politic and corporate of the State of Arizona, hereinafter called COUNTY; and Kathryn Kellner Studio, hereinafter called CONTRACTOR.

WITNESSETH

WHEREAS, COUNTY requires the services of a CONTRACTOR to provide presentation skills and communication strategy services; and

WHEREAS, consistent with Board of Supervisors Policy D29.6, III. (C) CONTRACTOR has been approved to provide said services; and

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I - TERM AND EXTENSION/RENEWAL/CHANGES

This Contract, as awarded by the Board Of Supervisors, shall commence on September 1, 2014 and shall terminate on August 31, 2015, unless sooner terminated or further extended pursuant to the provisions of this Contract. The parties may renew this Contract for up to four (4) additional one-year periods or any portion thereof.

Any modification, or extension of the contract termination date, shall be by formal written amendment executed by the parties hereto.

Amendments to the Contract must be approved by the Board of Supervisors or the Procurement Director, as required by the Pima County Procurement code, before any work or deliveries under the Amendment commences.

ARTICLE II - SCOPE OF SERVICES

This Contract establishes the agreement under which the CONTRACTOR will provide COUNTY with products and services in accordance with the attached Exhibit A: Scope of Services (one page).

CONTRACTOR shall provide COUNTY the goods and services as defined in this Contract. All goods and services shall comply with the requirements and specifications as called for in this Contract.

CONTRACTOR shall employ suitably trained and skilled professional personnel to perform all CONTRACTOR services under this Contract. Prior to changing any key personnel, especially those key personnel COUNTY relied upon in making this Contract, CONTRACTOR shall obtain the approval of COUNTY. The key personnel include the following staff: Kathryn Kellner

ARTICLE III – COMPENSATION AND PAYMENT

In consideration for the goods and services specified in this Contract, the COUNTY agrees to pay CONTRACTOR in an amount not to exceed fifty thousand dollars (\$50,000.00). Pricing for work will be as set forth in Exhibit B: Compensation and Payment (one page).

Although State and City sales tax may not be fully or accurately defined on an order, they will be paid when they are DIRECTLY applicable to Pima County and invoiced as a separate line item; those taxes should not be included in the item unit price.

CONTRACTOR shall provide detailed documentation in support of requested payment. Payment requests shall assign all costs to items identified by Exhibit B.

It is the intention of both parties that pricing shall remain firm during the term of the contract. Price increases shall only be considered in conjunction with a renewal of the Contract. In the event that economic conditions are such that unit price increases are desired by the CONTRACTOR upon renewal of the Contract, CONTRACTOR shall submit a written request to COUNTY with supporting documents justifying such increases at least 90 days prior to the termination date of the Contract. It is agreed that the Unit Prices shall include compensation for the CONTRACTOR to implement and actively conduct cost and price control activities. COUNTY will review the proposed pricing and determine if it is in the best interest of COUNTY to renew or extend the Contract as provided for in Article I of this Contract.

CONTRACTOR shall not provide goods and services in excess of the Exhibit A Line Item and Contract Amounts without prior authorization by an amendment executed by COUNTY. Goods and Services provided in excess of Line Item or Contract Total Amounts without prior authorization by fully executed amendment shall be at CONTRACTOR'S own risk.

For the period of record retention required under Article XXII, COUNTY reserves the right to question any payment made under this Article and to require reimbursement therefore by setoff or otherwise for payments determined to be improper or contrary to the contract or law.

ARTICLE IV - INSURANCE

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

- a) If required by law, workers' compensation coverage including employees' liability coverage.

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

ARTICLE V - INDEMNIFICATION

CONTRACTOR 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 out of any act, omission, fault or negligence by the CONTRACTOR, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of this Contract.

CONTRACTOR warrants that all products and services provided under this contract are non-infringing. CONTRACTOR will indemnify, defend and hold COUNTY harmless from any claim of infringement arising from services provided under this contract or from the provision, license, transfer or use for their intended purpose of any products provided under this Contract.

ARTICLE VI - COMPLIANCE WITH LAWS

CONTRACTOR shall comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation. In the event any services provided under this contract require a

license issued by the Arizona Registrar of Contractors (ROC), Contractor certifies that those services will be provided by a contractor licensed by ROC to perform those services in Arizona. The laws and regulations of the State of Arizona shall govern the rights, performance and disputes of and between the parties. 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 an agreement shall apply, but do not require an amendment/revisions.

ARTICLE VII - INDEPENDENT CONTRACTOR

The status of the CONTRACTOR shall be that of an independent contractor. Neither CONTRACTOR, nor CONTRACTOR'S officer's agents or employees shall be considered an employee of Pima County or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. CONTRACTOR 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 which COUNTY may incur because of CONTRACTOR'S failure to pay such taxes. CONTRACTOR shall be solely responsible for program development and operation.

ARTICLE VIII - SUBCONTRACTOR

CONTRACTOR 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 the CONTRACTOR 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

CONTRACTOR 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 COUNTY, provided that such approval shall not be unreasonably withheld.

ARTICLE X - NON-DISCRIMINATION

CONTRACTOR 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 which is hereby incorporated into this contract as if set forth in full herein. During the performance of this contract, CONTRACTOR 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

CONTRACTOR 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

CONTRACTOR 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 CONTRACTOR or any third party by reason of such determination or by 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 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 ARS § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

ARTICLE XV – TERMINATION OF CONTRACT FOR DEFAULT

A. Upon a failure by CONTRACTOR to cure a default under this Contract within 10 days of receipt of notice from COUNTY of the default, COUNTY may, in its sole discretion, terminate this Contract for default by written notice to CONTRACTOR. In this event, COUNTY may take over the work and complete it by contract or otherwise. In such event, CONTRACTOR shall be liable for any damage to the COUNTY resulting from CONTRACTOR's default, including any increased costs incurred by COUNTY in completing the work.

B. The occurrence of any of the following, without limitation to the named events, shall constitute an event of default:

1. Abandonment of or failure by CONTRACTOR to observe, perform or comply with any material term, covenant, agreement or condition of this Contract, or to prosecute the work or any separable part thereof with the diligence that will insure completion within the time specified in this contract, including any extension, or a failure to complete the work (or the separable part of the work) within the specified time;
2. Persistent or repeated refusal or failure to supply adequate staff, resources or direction to perform the work on schedule or at an acceptable level of quality;
3. Refusal or failure to remedy defective or deficient work within a reasonable time;
4. Loss of professional registration or business or other required license or authority, or any curtailment or cessation for any reason of business or business operations that would substantially impair or preclude CONTRACTOR's performance of this Contract;
5. Disregard of laws, ordinances, or the instructions of COUNTY or its representatives, or any otherwise substantial violation of any provision of the contract;
6. Performance of work hereunder by personnel that are not qualified or permitted under state law or local law to perform such services;
7. Commission of any act of fraud, misrepresentation, willful misconduct, or intentional breach of any provision of this Contract; or
8. If a voluntary or involuntary action for bankruptcy is commenced with respect to CONTRACTOR, or CONTRACTOR becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver or liquidator appointed in respect of its assets.

C. In the event of a termination for default:

1. All finished and unfinished drawings, specifications, documents, data, studies, surveys, drawings, photographs, reports and other information in whatever form, including electronic, acquired or prepared by CONTRACTOR for this project shall become COUNTY's property and shall be delivered to COUNTY not later than five (5) business days after the effective date of the termination;
2. COUNTY may withhold payments to CONTRACTOR arising under this or any other Contract for the purpose of set-off until such time as the exact amount of damage due COUNTY from CONTRACTOR is determined; and
3. Subject to the immediately preceding subparagraph (2), COUNTY's liability to CONTRACTOR shall not exceed the Contract value of work satisfactorily performed prior to the date of termination for which payment has not been previously made.

D. The Contract will not be terminated for default nor the CONTRACTOR charged with damages under this Article, if:

(1) Excepting item (8) in paragraph B above, the event of default or delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR. Examples of such causes include—

- (i) Acts of God or of the public enemy,

- (ii) Acts of the COUNTY in either its sovereign or contractual capacity,
 - (iii) Acts of another Contractor in the performance of a contract with the COUNTY,
 - (iv) Fires,
 - (v) Floods,
 - (vi) Epidemics,
 - (vii) Quarantine restrictions,
 - (viii) Strikes,
 - (ix) Freight embargoes,
 - (x) Unusually severe weather, or
 - (xi) Delays of subcontractors at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both CONTRACTOR and the subcontractor(s); and
- (2) The CONTRACTOR, within seven (7) days from the beginning of any event of default or delay (unless extended by COUNTY), notifies the COUNTY in writing of the cause(s) therefore. In this circumstance, the COUNTY shall ascertain the facts and the extent of the resulting delay. If, in the reasonable judgment of COUNTY, the findings warrant such action, the time for completing the work may be extended.

E. For the purposes of paragraph A above, "receipt of notice" shall include receipt by hand by CONTRACTOR's designated representative, by facsimile transmission with notice of receipt, or under the Notices clause of this Contract.

F. If, after termination of the Contract for default, it is determined that the CONTRACTOR was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the COUNTY.

G. The rights and remedies of COUNTY in this Article are cumulative and in addition to any other rights and remedies provided by law or under this contract.

ARTICLE XVI – TERMINATION FOR CONVENIENCE

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

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 CONTRACTOR, other than to pay for services rendered prior to termination.

ARTICLE XVII - 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:

COUNTY:
David Smutzer, Legal Administrator
Pima County Attorney's Office
32 N. Stone Avenue, 14th FL
Tucson, AZ 85701
(520) 740-5600

CONTRACTOR:
Kathryn Kellner, dba Kellner Studio
3736 N. Jackson
Tucson, AZ 85719
Fax: (520) 881-7434

ARTICLE XVIII - NON-EXCLUSIVE CONTRACT

CONTRACTOR 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 XIX - OTHER DOCUMENTS

CONTRACTOR and COUNTY in entering into this Contract have relied upon information provided by the CONTRACTOR. These documents are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this contract.

ARTICLE XX - 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 XXI - 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 XXII - BOOKS AND RECORDS

CONTRACTOR 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, CONTRACTOR 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 XXIII- PUBLIC INFORMATION

Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted in response to this solicitation, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.

Any records submitted in response to this solicitation that respondent reasonably believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL by respondent prior to the close of the solicitation.

Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., County shall release records marked CONFIDENTIAL ten (10) business days after the date of notice to the respondent of the request for release, unless respondent has, within the ten day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release shall not be counted in the time calculation. Respondent shall be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

County shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor shall County be in any way financially responsible for any costs associated with securing such an order.

ARTICLE XXIV – LEGAL ARIZONA WORKERS ACT COMPLIANCE

CONTRACTOR hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to CONTRACTOR'S employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). CONTRACTOR shall further ensure

that each subcontractor who performs any work for CONTRACTOR 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 CONTRACTOR and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of CONTRACTOR'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 CONTRACTOR 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, CONTRACTOR 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, as soon as possible so as not to delay project completion.

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

ARTICLE XXV- GRANT COMPLIANCE

"Not Applicable"

ARTICLE XXVI - ENTIRE AGREEMENT

This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or 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 THEREOF, the parties have affixed their signatures to this Contract on the date written below.

PIMA COUNTY

Chair, Board of Supervisors

Date

CONTRACTOR


Authorized Officer Signature

Kathryn R. Kellner
Printed Name and Title

Nov. 3, 2014
Date

ATTEST

Clerk of Board

Date

APPROVED AS TO FORM


Deputy County Attorney

TOBIN ROSEN

Print DCA Name

10/17/14
Date

APPROVED AS TO CONTENT


Department Head

11/17/14
Date

**Exhibit A:
Scope of Work**

1. Under general direction from the County Attorney, work in close collaboration with Chief Deputies and Deputy County Attorneys to deliver performance based training for mid-level and experienced prosecutors. Concentration will be on improving and enhancing attorney advocacy skills by providing communication tools and techniques that better enable attorneys to: 1) deliver effective and persuasive opening and closing statements, 2) communicate complex legal arguments in a credible, persuasive and convincing manner, 3) build enhanced relationships with victims and witnesses, and 4) increase credibility and persuasiveness before jurors. Also be available to administrative professionals and attorney and support staff supervisors for the purpose of improving the quality of public and office presentations and oral communication by delivering training and providing consultation in skills, tools and techniques and enhance the individual's ability to present and clearly articulate their message.

Consultant will accomplish the above by:

As directed by the County Attorney and Chief Deputies attend court proceedings (offsite) and presentations (primarily onsite and occasionally offsite) to observe and evaluate attorneys with subsequent individual consultation and feedback;

Attending, participating and providing feedback in office scheduled mock trials;

Conducting formal group training sessions for attorneys and staff. Group trainings will range from approximately five to fifty attendees and curriculum will be based on observations necessary to improve communication skills.

Conducting individual training and feedback sessions for attorneys and staff.

Most services will be provided onsite primarily during normal business hours (8:00 A.M. to 5:00 P.M. Monday through Friday) but on occasion special observations and training assignments may be needed both offsite and outside of normal business hours.

COUNTY will provide assistance in photocopying session materials for each training. CONTRACTOR will provide any written materials for each session to Pima County Attorney's Office three business days prior to each session.

Special Delivery Requirements

Consultant will report to, take direction from, and work directly with the County Attorney. Consultant will meet with the County Attorney a minimum of once a month and with the Chief Deputies and Legal Administrator as necessary. Invoicing on a monthly basis requires detailing the types and amount of training provided using an all-inclusive hourly basis for billing.

Ordering:

County will make releases by issuing work orders under this Agreement. Releases will be transmitted to Supplier via: Fax or Phone. Contract administration for the County may be performed by David Smutzer, Pima County Attorney's Office, 520-740-5614, and David.Smutzer@pcao.pima.gov.

Quantities referred to are estimated quantities, and Pima County reserves the right to increase or decrease these amounts as circumstances may require. No guarantee is made as to the actual work that will be performed during the term of the contract.

Any increase in excess of amount of work must be made through a fully executed change order or amendment to the contract. The contractor will work on an as-needed basis, with no limitations on the number of trips to the on-site locations.

**Exhibit B:
Compensation and Payment**

Hourly Rate: One Hundred dollars (\$100.00)

Payment Terms: net 30 days