



**BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS**

Requested Board Meeting Date: June 6, 2017

or Procurement Director Award

Contractor/Vendor Name (DBA): Jason E. Butler and Hiro Tashima

Project Title/Description:

Artist Services for Valencia Road, Wade Road to Ajo Highway.

Purpose:

Provide public art design and fabrication for roadway improvement project.

Procurement Method:

Competitive selection compliant with Admin. Proc. 3-16 for Public Art.

Program Goals/Predicted Outcomes:

Incorporate public art into roadway CIP project per BOS Policy C.3.3. and Admin Proc. 3-16.

Public Benefit:

Visual enhancement to roadway construction project.

Metrics Available to Measure Performance:

Public opinion as measured through calls, letters, newspaper editorials and other.

Retroactive:

NO

Original Information

Document Type: CT Department Code: TR Contract Number (i.e., 15-123): 17*365

Effective Date: 06/6/17 Termination Date: 6-5-20 Prior Contract Number (Synergen/CMS): NA

Expense Amount: \$ 140,000.00 Revenue Amount: \$ _____

Funding Source(s): RTA, Impact Fees

Cost to Pima County General Fund: \$0

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: _____

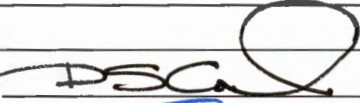
*To: COB. 5.24.17 (1)
Ver. - 1
pgs. 15*

Contact: Jonathan Crowe

Department: TRAN

Telephone: 724-6383

Department Director Signature/Date:

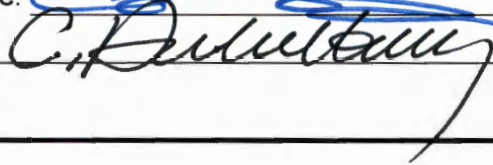


Deputy County Administrator Signature/Date:



5/3/17
5/8/17

County Administrator Signature/Date:
(Required for Board Agenda/Addendum Items)



5/8/17

Pima County Department of Transportation

Project: Artist Services for Valencia Road, Wade Road to Ajo Highway, W.O. 4RTVWE

Contractor: Jason E. Butler & Hiro Tashima
7825 E. Ainsworth Drive
Tucson, AZ 85710
(520) 396-0645
email@jasonebutler.com

Amount: \$140,000

Funding: RTA, DIF

CONTRACT

NO. CT-TR-17-365

AMENDMENT NO. _____

This number must appear on all invoices, correspondence and documents pertaining to this contract.

(STAMP HERE)

PROFESSIONAL SERVICES CONTRACT [Board of Supervisors]

1. Parties, Background and Purpose.

- 1.1. Parties. This Contract is between Pima County, a body politic and corporate of the State of Arizona ("County"), and Jason E. Butler and Hiro Tashima ("Contractor").
- 1.2. Authority. County selected Contractor pursuant to and consistent with Board of Supervisors Policy C3.3 and Pima County Administrative Procedure 3-16.
- 1.3. Solicitation. Pursuant to the County's Public Art Program, the County directed the Arts Foundation for Tucson to conduct a "Call to Artists," and subsequently a selection panel recommended that the County incorporate the Contractor's artwork ("Artwork") into this roadway project.

2. Term.

- 2.1. Original Term. This Contract is effective for a three-year period commencing on the date that it is fully executed by the parties (the "Initial Term"). "Term," when used in this Contract, means the Initial Term plus any exercised Extension Options.
- 2.2. Extension Options. County may renew this Contract for up to four (4) additional periods of up to 1 year each (each an "Extension Option"). An Extension Option will be effective only upon execution by the Parties of a formal written amendment.

3. Scope of Services. Contractor will provide County with the products and/or services ("Goods and Services") described in **Exhibit A (2 pages)**, at the dates and times described on **Exhibit A** or, if **Exhibit A** contains no dates or time frames, then upon demand. The Goods and Services must comply with all requirements and specifications in the Solicitation.

4. Key Personnel. Contractor will employ suitably trained and skilled professional personnel to perform all consultant services under this Contract. Prior to changing any key personnel, especially those key personnel County relied upon in making this Contract, Contractor will

obtain the approval of County. The key personnel include the following staff: Jason E. Butler and Hiro Tashima.

5. **Compensation and Payment.**

5.1. Rates; Adjustment. County will pay Contractor at the rates set forth in **Exhibit B**. Those rates will remain in effect during an Extension Option period unless Contractor, at least 90 days before the end of the then-existing Term, or at the time the County informs Contractor that the County intends to extend the Term, if that is earlier, notifies County in writing of any adjustments to those rates, and the reasons for the adjustments.

5.2. Maximum Payment Amount. County's total payments to Contractor under this Contract, including any sales taxes, may not exceed \$140,000 (the "NTE Amount"). The NTE Amount can only be changed by a formal written amendment executed by the Parties. Contractor is not required to provide any goods or services, payment for which will cause the County's total payments under this Contract to exceed the NTE Amount; if Contractor does so, it is at the Contractor's own risk.

5.3. Sales Taxes. The payment amounts or rates in **Exhibit B** do not include sales taxes. Contractor may invoice County for sales taxes that Contractor is required to pay on goods supplied to the County under this Contract. Contractor will show sales taxes as a separate line item on invoices.

5.4. Timing of Invoices. Contractor will invoice County on a monthly basis unless a different billing period is set forth in **Exhibit B**. County must receive invoices no more than 30 days after the end of the billing period in which Contractor delivered the invoiced products or services to County. County may refuse to pay for any product or service for which Contractor does not timely invoice the County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months late.

5.5. Content of Invoices. Contractor will include detailed documentation in support of its invoices and assign each amount billed to an appropriate line item.

5.6. Invoice Adjustments. County may, at any time during the Term and during the retention period set forth in Section 24 below, question any payment under this Contract. If County raises a question about the propriety of a past payment, Contractor will cooperate with County in reviewing the payment. County may set-off any overpayment against amounts due to Contractor under this or any other contract between County and Contractor. Contractor will promptly pay to County any overpayment that County cannot recover by set-off.

6. **Insurance.** Contractor will procure and maintain at its own expense insurance policies (the "Required Insurance") satisfying the below requirements (the "Insurance Requirements") until all of its obligations under this Contract have been met. The below Insurance Requirements are minimum requirements for this Contract and in no way limit Contractor's indemnity obligations under this Contract. The County in no way warrants that the required insurance is sufficient to protect the Contractor for liabilities that may arise from or relate to this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.

6.1. Insurance Coverages and Limits:

- 6.1.1. Commercial General Liability (CGL): Occurrence Form covering liability arising from premises, independent contractors, personal injury, bodily injury, broad form contractual liability and products-completed operations with minimum limits not less than \$1,000,000 Each Occurrence and \$1,000,000 General Aggregate.
 - 6.1.2. Business Automobile Liability: Coverage will be waived for any owned, leased, hired, and/or non-owned autos assigned to or used in the performance of this Contract if Contractor agrees that, in consideration of the waiver of the Business 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. Contractor agrees that failure to comply with this requirement indemnifies the County against any bodily injury or property damage claims resulting from an accident.
 - 6.1.3. Workers' Compensation (WC) and Employers' Liability: Contractor is performing work as an independent contractor for County. Contractor shall provide County with a completed Workers' Compensation Insurance Waiver Form prior to any work being performed by Contractor.
- 6.2. Additional Coverage Requirements:
- 6.2.1. Claims Made Coverage: If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.
 - 6.2.2. Insurer Financial Ratings: Coverage must be placed with insurers acceptable to the County with A.M. Best rating of not less than A- VII, unless otherwise approved by the County.
 - 6.2.3. Additional Insured: The General Liability policy must be endorsed to include Pima County and all its related special districts, elected officials, officers, agents, employees and volunteers (collectively "County and its Agents") as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor. The full policy limits and scope of protection must apply to the County and its Agents as an additional insured, even if they exceed the Insurance Requirements.
 - 6.2.4. Waiver of Subrogation: Commercial General Liability and Workers' Compensation coverages must each contain a waiver of subrogation in favor of County and its Agents for losses arising from work performed by or on behalf of the Contractor.
 - 6.2.5. Primary Insurance: The Required Insurance policies, with respect to any claims related to this Contract, must be primary and must treat any insurance carried by County as excess and not contributory insurance. The Required Insurance policies may not obligate the County to pay any portion of a Contractor's deductible or Self Insurance Retention (SIR).
 - 6.2.6. Subcontractors: Contractor must either (a) include all subcontractors as additional insureds under its Required Insurance policies, or (b) require each subcontractor to separately meet all Insurance Requirements and verify that

each subcontractor has done so, Contractor must furnish, if requested by County, appropriate insurance certificates for each subcontractor. Contractor must obtain County's approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.

6.3. Verification of Coverage:

6.3.1. Certificates: Insurer or Broker of Contractor must evidence compliance with the Insurance Requirements by furnishing certificates of insurance executed by a duly authorized representative of each insurer. Each certificate must include:

- The Pima County tracking number for this Contract, which is shown on the first page of the Contract, and a project description, in the body of the Certificate,
- A notation of policy deductibles or SIRs relating to the specific policy, and
- Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation waiver endorsements for the County and its Agents.

6.3.2. Timing of Coverage: Each Required Insurance policy and appropriate endorsements must be in effect not less than 15 days prior to commencement of work under this Contract.

6.3.3. Renewal Certificate: A renewal certificate must be provided to County not less than 15 days prior to the policy's expiration date, along with actual copies of the additional-insured and waiver-of-subrogation endorsements.

6.3.4. Policies: County reserves the right to, at any time, require complete copies of any or all Required Insurance policies.

6.3.5. Cancellation Notice: Contractor must notify the County in advance, in writing, if a Required Insurance policy will expire, be cancelled, be suspended, or be materially changed. The notice must be provided to the County by the earlier of (a) 30 days before the change will take effect, and (b) 2 business days after Contractor receives notice of the change from its insurer. For cancellation for non-payment, Insurer must provide County with written notice ten (10) days prior to cancellation of policy.

6.4. Approval and Modifications: The Pima County Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal Contract amendment, but the approval must be in writing. Neither the County's failure to receive a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, or the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

7. **Indemnification.** To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless Pima County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnitee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims")

arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Contractor or any of Contractor's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. Contractor is responsible for primary loss investigation, defense and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Contract.

8. Laws and Regulations.

8.1. Compliance with Laws. Contractor will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.

8.2. Licensing. Contractor warrants that it is appropriately licensed to provide the services under this Contract and that its subcontractors will be appropriately licensed.

8.3. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.

9. **Independent Contractor.** Contractor is an independent contractor. Neither Contractor, nor any of Contractor's officers, agents or employees will be considered an employee of Pima County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under the Pima County Merit System. Contractor is responsible for paying all federal, state and local taxes on the compensation received by Contractor under this Contract and will indemnify and hold County harmless from any and all liability that County may incur because of Contractor's failure to pay such taxes.

10. **Subcontractors.** Contractor is 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 its own employees. Nothing in this Contract creates 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.

11. **Assignment.** Contractor may not assign its rights or obligations under this Contract, in whole or in part, without the County's prior written approval. County may withhold approval at its sole discretion.

12. **Non-Discrimination.** Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Contractor 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.

13. **Americans with Disabilities Act.** Contractor will 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.
14. **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 will not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.
15. **Full and Complete Performance.** The failure of either party to insist, in one or more instances, upon the other party's full and complete performance under this Contract, or to take any action based on the other party's failure to fully and completely perform, 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.
16. **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 this Contract by reference.
17. **Ownership of Artwork.**
 - 17.1. **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 Contractor 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.
 - 17.2. **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:
 - 17.2.1. **Notice.** If time permits, County shall make reasonable good faith efforts to notify Contractor at least 20 calendar days prior to authorizing any alteration of the Artwork, at the last phone number or address provided by Contractor 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 Contractor within 30 calendar days after such alteration.
 - 17.2.2. **Consultation.** After receiving such notice, Contractor 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 Contractor unless otherwise specifically agreed in writing. If County intends to remove the Artwork, Contractor shall consult regarding methods to minimize or repair any alteration to the Artwork caused by such removal and the potential costs of such removal.

- 17.2.3. Restoration. If the Artwork is altered, with or without prior notice to Contractor, and County intends to maintain the Artwork on display, County shall make a reasonable good faith effort to engage Contractor in the restoration of the Artwork and to compensate Contractor for Contractor's time and efforts at fair market value, which may be the subject of a future agreement between Contractor and County. However, County has no obligation under this Contract to restore the Artwork to its original condition, to compensate Contractor for any restoration work, or to maintain the Artwork on display. If Contractor 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 Contractor for such restoration. During Contractor's lifetime, County shall make best efforts not to display or deaccession only a portion of the Artwork without Contractor's consent.
- 17.2.4. Removal by Contractor. 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 Contractor to remove the Artwork at Contractor'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 Contractor. If Contractor fails to remove the Artwork within that 30 day period, County may destroy the Artwork.
- 17.2.5. Remedies. If County breaches any of its obligations under this Section, Contractor'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 Contractor a required prior notice of alteration, Contractor 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, Contractor may, but is not obligated to, restore the Artwork at Contractor's expense. If Contractor elects not to restore the Artwork, County may retain another contractor or conservator to restore it, or may alter the Artwork in any manner, at County's sole discretion. If County alters the Artwork without Contractor's consent in a manner that is prejudicial to Contractor's reputation, Contractor retains the right to disclaim authorship of the Artwork in accordance with 17 U.S.C. §106A (a) (2).
- 17.2.6. Third Parties. Except as provided in this Contract, with respect to third parties who are not officers, employees, agents, successors or assigns of County, Contractor retains Contractor'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 Contractor 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.

18. Copyright.

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

18.2. County's Intellectual Property License. Contractor 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 Contract, whether in whole or in part, in all media (including electronic and digital).

18.2.1. Implementation, Use and Display. County may use and display the Artwork.

18.2.2. 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 Contractor.

18.2.3. Public Records Requests. Any documents provided by Contractor to County are public records and County may authorize third parties to review and reproduce such documents pursuant to public records laws.

18.3. Publicity. County shall have the right to use Contractor'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. Contractor shall be reasonably available to attend any inauguration or presentation ceremonies relating to the public dedication of the Artwork.

19. Warranty.

19.1. Contractor warrants that the Artwork is an original production of Contractor'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 Contractor for sale or display elsewhere without the express written permission of County.

19.2. Contractor 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, Contractor shall repair or replace all work to the satisfaction of County without cost to County.

20. Termination by County.

20.1. Without Cause. County may terminate this Contract at any time, with or without cause, by serving a written notice upon Contractor at least 30 days before the effective date of the termination. In the event of such termination, County's only obligation to Contractor will be payment for services rendered prior to the date of termination.

20.2. With Cause. County may terminate this Contract at any time without advance notice and without further obligation to County when County finds Contractor to be in default of any provision of this Contract.

20.3 Non-Appropriation. Notwithstanding any other provision in this Contract, County may terminate this Contract 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 will have no further obligation to Contractor, other than to pay for services rendered prior to termination.

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

County:

Priscilla Cornelio, P.E., Director
Department of Transportation, 4th floor
201 N. Stone Avenue, Tucson AZ 85701

Contractor:

Jason E. Butler and Hiro Tashima
7825 E. Ainsworth Drive
Tucson, AZ 85710

22. 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.

23. 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 is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

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

25. Books and Records. Contractor will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Contractor will retain all records relating to this Contract for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.

26. Public Records.

26.1. Disclosure. 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 documents submitted in response to the solicitation resulting in award of this Contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are

subject to release and/or review by the general public upon request, including competitors.

- 26.2 Records Marked Confidential; Notice and Protective Order. If Contractor reasonably believes that some of those records contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL." In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

27. Legal Arizona Workers Act Compliance.

- 27.1 Compliance with Immigration Laws. Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.
- 27.2 Books & Records. County has 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.
- 27.3 Remedies for Breach of Warranty. 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, is 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 will 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. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Contractor.
- 27.4 Subcontractors. Contractor will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section 24 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 is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

28. Grant Compliance. Not Applicable.

29. **Israel Boycott Certification.** Contractor hereby certifies that it is not currently engaged in, and will not for the duration of this Contract engage in, a boycott of Israel as defined by A.R.S. § 35-393.01. Violation of this certification by Contractor may result in action by the County up to and including termination of this Contract.
30. **Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written.
31. **Amendment.** The parties may modify, amend, alter or extend this Contract only by a written amendment signed by the parties.

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PIMA COUNTY

Chair, Board of Supervisors

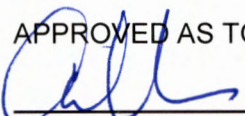
Date

ATTEST

Clerk of the Board

Date

APPROVED AS TO FORM



Deputy County Attorney


ANDREW FLAGG

Print DCA Name

4/3/2017

Date

CONTRATOR



Authorized Officer Signature

JASON BUTLER, ARTIST

Printed Name and Title

4/27/17

Date



Authorized Officer Signature

Hirotsune Tashima, Artist

Printed Name and Title

5/19/17

Date

EXHIBIT 'A'

Scope of Work

Artist Services for Valencia Road, Wade Road to Ajo Way

During the term of this Contract, the Contractor, Jason Butler and Hiro Tashima, shall perform professional services for the County in connection with the above referenced project. This scoping document shall be used to plan, conduct, and complete the Contractor's work on the project.

I. Design Phase

- A. Upon execution of this Contract, Contractor 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. Contractor shall work cooperatively with County, design team, contractors, and the local community as represented by the Community Advisory Committee. 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. Contractor shall initially prepare at least one conceptual design for the Artwork, and shall submit these concepts to County staff and project manager for review. The conceptual design submittal shall include information about the content, scale, location, context, relationship of components, and materials of the proposed Artwork.
- D. Contractor 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 Contract.
- E. The County in reviewing the proposed Artwork may require that the Contractor make modifications before submitting to public review. Contractor 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. Contractor agrees to address County's comments and modification requirements prior to final review and approval. Contractor shall give prompt written notice to the County whenever the Contractor 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, Contractor shall present designs of the proposed Artwork at public meetings to gather input and select a final design. Contractor shall be available with reasonable advance notice for meetings, as necessary. Contractor shall document community and design team input, feedback and outcomes.
- G. Once a final design has been selected, Contractor 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, Contractor shall provide structural engineering drawings.
- H. If Artwork is integrated into roadway project construction plans, Contractor shall provide detailed construction drawings with sufficient detail to install Artwork using standard construction methods. Contractor shall coordinate with the Project Team to prepare and finalize drawings and specifications that Design Engineer can include in the roadway design plans.

- I. The Project Manager will provide Contractor with the following coordination support:
 1. Assisting and cooperating with Contractor in completing the Scope of Services in a timely and effective manner; including assisting Contractor 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, Contractor 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 Contractor existing information, which may be pertinent to the Scope of Services described herein.
 5. Responding within a reasonable time to Contractor requests for written decisions or determinations, pertaining to the Scope of Services, so as not to delay the services of the Contractor.
 6. Giving prompt written notice to Contractor whenever the Engineer becomes aware of an event, occurrence, condition or circumstance, which may substantially affect Contractor performance of her Scope of Services under this Contract.

III. Fabrication and Installation

- A. Contractor must receive written approval from County of the Final Design of the Artwork before proceeding with fabrication and installation. Contractor shall fabricate the ARWORK in substantial conformity with the approved Final Design and, if applicable, approved engineering and construction documents.
- B. Contractor shall be available with reasonable advance notice for meetings, as necessary to review construction plans and specifications, and for field reviews.
- C. Contractor shall make any necessary modifications or revisions to the Artwork as requested by the County for a proper and structurally sound installation.
- D. If Contractor fabricates any portion of the Artwork themselves, Contractor is responsible for transporting Artwork to the site but shall coordinate with the Project Manager.
- E. Contractor shall fabricate and install, at their own expense, a plaque on or near the Artwork stating the title, Contractor name, date, and other details as determined by the Contractor and County, subject to approval by the Arts Foundation for Tucson and County prior to installation.
- F. When Artwork is completed, Contractor shall provide the Arts Foundation for Tucson 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.
- G. When Artwork is completed, Contractor shall provide a minimum of (6) digital images and (6) 8" x 10" color prints of the completed and installed Artwork to the Arts Foundation for Tucson and County.

EXHIBIT 'B'

PAYMENT

Artist Services for Valencia Road, Wade Road to Ajo Way

- A. In consideration of the performance and service described in the Scope of Services, County shall pay Contractor the estimated amounts as set forth below and Contractor shall charge County only in accordance with those same amounts. Checks for payment shall be issued to Jason E. Butler. Total payment for services provided during the term of this Contract shall not exceed \$140,000.00
- B. During the design phase, Contractor shall be paid for design services including those of Contractor sub-consultants. Contractor shall submit invoices to County with documentation that accurately defines progress towards completion of tasks, and the Contractor'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 \$42,000.00 will be expended for design services. 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 \$98,000.00 will be expended on Artwork materials, fabrication, transportation and installation. Contractor shall submit itemized invoices for services based upon the mutually agreed upon schedule and final design plans provided at the 100% design milestone.