



BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS

Award Contract Grant

Requested Board Meeting Date: April 04, 2023

or Procurement Director Award:

* = Mandatory, information must be provided

***Contractor/Vendor Name/Grantor (DBA):**

Troy Neiman

***Project Title/Description:**

Artist Services for the Office of the Medical Examiner

***Purpose:**

Artist service to include preparation of a final art design through research, meetings, submittals, fabrication, and installation.

***Procurement Method:**

Exempt per Section 11.12.030 as a process approved by the County Administrator.

***Program Goals/Predicted Outcomes:**

To design and fabricate an art piece for a new Office of the Medical Examiner Building in compliance with the 1% public art policy

***Public Benefit:**

Art will engage the Office of the Medical Examiner staff & visitors to highlight the important work the facility provides to the community.

***Metrics Available to Measure Performance:**

Successful fabrication and installation of the art piece which is reflective of the context of the project for the approved budget and within the agreed upon schedule.

***Retroactive:**

No

TO: COB, 3-21-2023⁽¹⁾
VERS.: 1
pgs.: 18

MAR20 23PM0449 PD

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: CT Department Code: FM Contract Number (i.e., 15-123): 23*0353
Commencement Date: April 10, 2023 Termination Date: April 09, 2025 Prior Contract Number (Synergen/CMS): _____
 Expense Amount \$ 180,000 * Revenue Amount: \$ _____

***Funding Source(s) required: COPS**

Funding from General Fund? Yes No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? Yes No

If Yes, is the Contract to a vendor or subrecipient? _____

Were insurance or indemnity clauses modified? Yes No
If Yes, attach Risk's approval.

Vendor is using a Social Security Number? Yes No
If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

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

Amendment No.: _____ AMS Version No.: _____

Commencement Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

Expense Revenue Increase Decrease

Amount This Amendment: \$ _____

Is there revenue included? Yes No If Yes \$ _____

***Funding Source(s) required: _____**

Funding from General Fund? Yes No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards)

Award Amendment

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

Commencement Date: _____ Termination Date: _____ Amendment Number: _____

Match Amount: \$ _____ Revenue Amount: \$ _____

***All Funding Source(s) required: _____**

*Match funding from General Fund? Yes No If Yes \$ _____ % _____

*Match funding from other sources? Yes No If Yes \$ _____ % _____

*Funding Source: _____

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Sara Fontaine

Department: Facilities Management

Telephone: 520-724-3101

Department Director Signature: Sheila Holman Date: 3.7.23

Deputy County Administrator Signature: [Signature] Date: 3/10/2023

County Administrator Signature: [Signature] Date: 3/11/2023

Pima County Department of Facilities Management

Project: Artist Services for the Office of the Medical Examiner

Contractor: Troy Neiman

Amount: \$180,000.00

Contract No.: CT-FM-23*0353

Funding: COPS

PUBLIC ART CONTRACT

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 Troy Neiman ("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 (collectively, "Pima County Public Art Program).
- 1.3. Solicitation. Pursuant to County's Public Art Program, County directed the Arts Foundation for Tucson ("Arts Foundation") to conduct a "Call to Artists," and subsequently a selection panel recommended that County incorporate Contractor's artwork (the "Artwork") into the Office of the Medical Examiner (the "Project").

2. Term.

- 2.1. Initial Term. This Contract commences on April 10, 2023 and terminates on April 09, 2025 ("Initial Term"). "Term," when used in this Contract, means the Initial Term plus any exercised extension options under Section 2.2. If the commencement date of the Initial Term is before the signature date of the last party to execute this Contract, the parties will, for all purposes, deem the Contract to have been in effect as of the commencement date.
- 2.2. Extension Options. County may extend this Contract for up to four (3) additional periods of up to one (1) year each (each an "Extension Option"). An Extension Option will be effective only upon execution by the Parties of a formal written amendment.
- 2.3. Survival of Provisions. Without limiting the ongoing effect of any other provision of this Contract, the Indemnification, Alteration of the Artwork, and Warranty provisions of Sections 7, 17, and 19, respectively, survive the termination of this Contract.

- 3. Scope of Work.** Contractor will provide County with the products and/or services ("Goods and Services") described in **Exhibit A** (3 pages), at the dates and times described on **Exhibit A** or, if **Exhibit A** contains no dates or time frames, then upon demand.

4. **Key Personnel.** Contractor will employ suitably trained and skilled professional personnel to perform all services under this Contract. Prior to changing any key personnel, especially the key personnel County relied upon in making this Contract, Contractor will obtain the approval of County. County relied on the following key personnel: Troy Neiman.

5. **Compensation and Payment.**

5.1. Payment; Adjustment. County will pay Contractor according to the percentages in **Exhibit B** (1 page). Those percentages 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 County informs Contractor that County intends to extend the Term, if that is earlier, notifies County in writing requesting adjustment to those percentages, 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 \$180,000 (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 Contractor's own risk.

5.3. Sales Taxes. The payment amounts 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 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 as set forth in **Exhibit B**. County must receive invoices no more than 30 days after 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 County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months after delivery of the product or service to County.

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, 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.**

6.1. 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 Insurance Requirements are minimum requirements for this Contract and in no way limit Contractor's indemnity obligations under this Contract. County in no way

warrants that the Required Insurance is sufficient to protect Contractor for liabilities that may arise from or relate to this Contract.

6.2. Insurance Coverages and Limits:

6.2.1. **Commercial General Liability (CGL)** – Occurrence Form with limits not less than \$1,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include coverage for liability arising from premises, operation, independent contractors, personal injury, bodily injury, and broad form contractual liability.

6.2.2. **Business Automobile Liability** – Coverage for bodily injury and property damage on any owned, leased, hired, and/or non-owned autos assigned to or used in the performance of this Contract with minimum limits of not less than \$1,000,000 each accident.

6.2.3. **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.

Note: The Worker's Compensation requirement does not apply if Contractor has no employees and therefore is exempt under A.R.S 23-901, and has signed and executed the Pima County Sole Proprietor Waiver.

6.3. County Verification and Approval of Coverage:

6.3.1. **Coverage Documentation:** Contractor must furnish County with certificates of insurance for each Required Insurance policy or other appropriate documentation to County. Each certificate must include in the body of the certificate the Pima County contract number and Project name for this Contract.

6.3.2. **Insurance Renewal:** The Required Insurance policies must be in effect prior to commencement of work under this Contract and remain in effect for the duration of the project. If the Required Insurance policies expire during the Contract term, a renewal certificate must be provided to County not less than 15 days prior to the policy's expiration date. Failure to maintain the Required Insurance, or to provide evidence of renewal prior to the renewal date, is a material breach of this Contract.

6.3.3. **Cancellation Notice:** Each Required Insurance policy must provide that County will receive not less than 30 days advance written notice of any policy cancellation, except 10 days prior notice is sufficient when the cancellation is for non-payment of a premium. Contractor must also provide notice to Pima County within two days of receipt of notice of policy suspension, cancellation or material change of coverage of the Required Insurance.

6.3.4. **Approval and Modifications:** The Pima County Risk Manager may modify the Insurance Requirements at any point during the Term of this Contract.

This can be done administratively, with written notice from the Risk Manager and does not require a formal Contract Amendment. The County's failure to obtain 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 Contractor, its insurance broker(s) and/or insurer(s), does not constitute 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) 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 (the "Claims"). 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 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. If Contractor cannot fully perform, County may obtain substitute performance to complete the work product Contractor has produced and for which Contractor has received payment. Exercising this right does not waive the County's remedies for damages for failure to perform or breach of contract.
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. **Alteration of the Artwork.**
 - 17.1. **Ability of County to Alter the 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. Artworks commissioned by 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, except as provided in Section 17.2.5 below, **Contractor hereby waives all rights under 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, and 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.**

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 will apply:

17.2.1. Notice. If time permits County will make reasonable good faith efforts to notify Contractor at least 30 calendar days prior to authorizing any alteration of the Artwork, at the last phone number or address provided by Contractor. 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. It is Contractor's obligation to maintain current contact information with County through the Capital Program Office.

17.2.2. Consultation. After receiving such notice, Contractor will 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 will 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 will 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. 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. County may contract with any other qualified art conservator or Contractor for such restoration. During Contractor's lifetime, County will make reasonable efforts not to display or deaccession only a portion of the Artwork without Contractor's consent.

17.2.4. Remedies. If County does not follow the procedures under this Section, Contractor's remedies will 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 will be given the first right of refusal to restore the Artwork at the same location and County will make reasonable efforts to provide funding for the restoration if appropriated funds are available. 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).

17.2.5. 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 will 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 will retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Contract. Contractor's copyright will 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 will 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 will 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 must 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 will 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 warrants the Artwork to be free from defects in material and workmanship for a period of two years from date of Final Acceptance by County 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 must 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, 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: Pima County Facilities Management
150 W. Congress, 3rd Floor
Tucson, AZ 85701

Contractor: Troy Neiman
232 N. Melrose Ave.
Tucson, AZ 85745

Contractor must immediately notify County of any changes in its contact information.

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.** Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

30. **Forced Labor of Ethnic Uyghurs.** Pursuant to A.R.S. § 35-394, if Contractor engages in for-profit activity and has 10 or more employees, Contractor certifies it is not currently using, and agrees for the duration of this Contract to not use (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Contractor becomes aware during the term of the Contract that the Company is not in compliance with A.R.S. § 35-394, Contractor must notify the County within five business days and provide a written certification to County regarding compliance within one hundred eighty days.

31. **Amendment.** The parties may modify, amend, alter or extend this Contract only by a written amendment signed by the parties

32. **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.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

This agreement will become effective when all parties have signed it. The date of the agreement will be the date this agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature).

PIMA COUNTY

Chair, Board of Supervisors

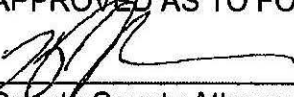
Date

ATTEST:

Clerk of the Board

Date

APPROVED AS TO FORM



Deputy County Attorney


Kyle Johnson

Print DCA Name

3/3/2023

Date

CONTRACTOR



Authorized Officer Signature

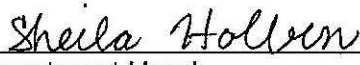
Troy Neiman, Owner

Printed Name and Title

3/15/23

Date

APPROVED AS TO CONTENT



Department Head

3.7.23

Date

EXHIBIT A

Scope of Work

Artist Services for Office of the Medical Examiner

I. Design Phase

- A. Upon execution of this Contract, Contractor must meet with County staff and Project Manager(s) to review opportunities and constraints, discuss possible designs, and identify appropriate areas as possible sites for the Artwork.
- B. Contractor will work cooperatively with County, the design team, contractors, and the local community who is represented by the Art Selection Panel (the "Panel"). The process of developing, reviewing, and approving the Artwork for County is an open and transparent process which may include public participation and scrutiny.
- C. Contractor will meet with the Panel and gather input concerning imagery, theme, and concept in the first design phase meeting.
- D. Contractor will use this feedback and prepare one or more conceptual designs for the Artwork, and must submit these concepts to the Panel following the first design phase meeting. Contractor's conceptual designs submittal will include information about the content, scale, location, context, relationship of components, and materials of the proposed Artwork.
- E. The Panel will provide input to Contractor on the conceptual designs through successive design phase meetings on a monthly basis. Contractor will make reasonable efforts to incorporate the Panel's feedback and revise designs accordingly. Contractor will present revisions to the Panel working and the Panel will approve a final design. There is no limit to the number of design phase panel meetings.
- F. Prior to final design approval by the Panel, Contractor will submit a **Public Art Budget and Schedule Form (Exhibit C)** with Contractor's conceptual design which explains how Contractor will spend the Budget amounts. The Budget must include a list of art elements with corresponding budget amounts, the projected allocation of responsibilities and activities related to design, production, and installation of the elements, and a timeline. The Project Manager must accept the budget.
- G. County may require that Contractor make modifications before submitting to public review through an open house or neighborhood association meeting to the extent practicable. Contractor will respond within a reasonable amount of time to County's requests for written decisions or determinations from Contractor, pertaining to the Project, so as not to delay the Project. Contractor will address County's comments and modification requirements prior to final review and approval. Contractor will give prompt written notice to County whenever Contractor becomes aware of an event, occurrence, condition or circumstance that may substantially affect the Project or Contractor's performance.
- H. Once County has reviewed and accepted the conceptual design and budget, Contractor will present conceptual designs at up to two (2) public meetings to gather input from the public. Contractor must be available with reasonable advance notice for public meetings, as necessary. Contractor will document community input.
- I. Contractor will take the community's input back to the Panel for consideration in the artwork design process. The Panel will determine if revisions of the conceptual designs based on the community's input are required. If changes to the conceptual design impact

the budget/schedule information, Contractor will submit a new budget form to County.

- J. Once the Panel has approved a final design with all dimensions, specifications, and materials samples, Contractor will prepare and will submit them to County for review and approval including review by Risk Management. Where applicable, Contractor will provide structural engineering drawings.
- K. Once the parties have completed items "A" through "J, the conceptual design becomes the final design. Once County pays Contractor for completion of the Design Phase, the final design becomes the property of County.
- L. If the Artwork is integrated into roadway project construction plans, Contractor must provide detailed construction drawings with sufficient detail to install the Artwork using standard construction methods. Contractor will coordinate with the Project Team to prepare and finalize drawings and specifications that County's Design Engineer can include in the roadway design plans.
- M. The Project Manager will provide Contractor with the following coordination support:
 - 1. Assist and cooperate with Contractor in completing the Scope of Work 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 the 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. Designate a representative who will have authority to transmit instructions, receive information and enunciate the Design Engineer's policies and decisions.
 - 3. Arrange public meetings (open houses, neighborhood association meeting) presentations to the extent practicable.
 - 4. Make available to Contractor existing information, which may be pertinent to the Scope of Work.
 - 5. Respond within a reasonable time to Contractor requests for written decisions or determinations, related to the Scope of Work, so as not to delay the services of Contractor.
 - 6. Give prompt written notice to Contractor whenever the Design Engineer becomes aware of an event, occurrence, condition or circumstance that may substantially affect Contractor performance under this Contract.

II. 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 must fabricate the Artwork in substantial conformity with the approved final design and, if applicable, approved engineering and construction documents.
- B. Upon initial payment to Contractor for fabrication costs and materials, County retains ownership of all purchased materials and fabricated parts/components created with those funds.
- C. Contractor must be available with reasonable advance notice for meetings, as necessary to review construction plans and specifications, and for field reviews.
- D. Contractor must make any necessary modifications or revisions to the Artwork as requested

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by County for a proper and structurally sound installation.

- E. If Contractor fabricates any portion of the Artwork themselves, Contractor is responsible for transporting Artwork to the site but will coordinate with the Project Manager.
- F. Contractor will fabricate and install, at its own expense, a plaque on or near the Artwork stating the title, Contractor name, date, and other details as determined by Contractor and County, subject to approval by County prior to installation.
- G. When the Artwork is completed, Contractor will provide County a recommended annual Maintenance Protocol (MP) 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.
- H. When the Artwork is completed, Contractor will provide a minimum of five (5) high resolution digital images (jpgs or pngs in rgb color mode at 2000 pixels wide or larger at 72ppi), of the completed Artwork to County and the Arts Foundation for use by both parties.

END OF EXHIBIT A

EXHIBIT B

PAYMENT

A. Artist Services for Office of the Medical Examiner

- A. County will pay Contractor the estimated amounts set forth below. County will issue checks for payment to "Troy Neiman"
- B. During the Design Phase, County will pay Contractor for design services, and those of its subcontractors/ sub-consultants, related to the design of the Artwork. Contractor will submit invoices to County with documentation that accurately describes Contractor's progress towards completion of the tasks in the invoice, and Contractor's estimate of the percentage of the task that is completed when Contractor submits the invoice.
- C. The parties estimate that County will pay Contractor no more than 30% of the NTE Amount or \$54,000 for design services. Allowable costs include design time, materials for models/presentations, and labor. County will only pay additional funds during the design phase if the additional funds are authorized by the Project Manager.
- D. The parties estimate that County will pay Contractor no more than 70% of the NTE Amount, or \$126,000 on Artwork materials, fabrication, transportation, and installation. County will pay Contractor this amount in two installments. County will pay the first installment to initiate fabrication and will pay the second installment upon delivery and installation of the Artwork. Contractor will submit itemized invoices to County for services based upon the mutually agreed upon schedule and final design plans provided at the 100% design milestone.

END OF EXHIBIT B

**EXHIBIT C
PUBLIC ART BUDGET AND SCHEDULE FORM**

Budget

(Itemized List of All Expenses)

TASKS	ITEMS	COST
DESIGN PHASE List any specialized materials for design development, computer renderings, presentations etc.		
ENGINEERING: <i>If applicable</i> Stamped engineering designs, soil samples, special permitting (if required),		
MATERIALS List all materials, specialized equipment to be purchased, include shipping costs		
FABRICATION, Subcontractors, special processes		
DELIVERY OF ARTWORK, crating, shipping, etc.		
INSTALLATION, special equip., crane, truck, scaffolding, forklift, assistants, plaque.		
CONTINGENCY	NA	
		TOTAL

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SCHEDULE

TASKS	START DATE	TIME TO COMPLETE EST.	COMPLETE DATE	Cost	Bill to County
DESIGN PHASE (Art Panel) <i>Upon panel approval of a conceptual design contractor submit to County for review. After approval and if practicable Contractor will present the design to the broader public.</i>					NA

Upon approval of conceptual design by the Panel, Contractor will complete out the remainder of this form and submit it to the Project Manager

Conceptual Artwork Design Approved by the Panel	NA	NA		NA	NA
ENGINEERING: <i>If applicable</i>					NA
Risk Review (RR): <i>Design Phase Complete: Final Design Approved by Risk Manager</i>				NA	<i>Up to 30% of total Budget</i>
APPROVED TO FABRICATION	NA	NA		NA	NA
MATERIALS <i>(Include time for ordering and receiving)</i>					<i>Up to 35% of total Budget</i>
FABRICATION					NA
DELIVERY OF ARTWORK AND INSTALLATION <i>Billable upon completion of project. plaque maintenance Protocol (MP) and all contractual obligations</i>					<i>Up to 35% of total Budget</i>

Contractor

Date

Project Manager

Date

END OF EXHIBIT C

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Revised 8/19/2022