



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

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 10/16/18

* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Bannerworks, Inc. dba Koryn Rolstad Studios

***Project Title/Description:**

Artist Services for Bike Barometer: Project 1

***Purpose:**

The purpose of this service is to design, fabricate and install a public art piece along the Santa Cruz Riverpark to meet the BOS Policy relating to public art.

***Procurement Method:**

Procurement Exempt; it is per the BOS Policy C 3.3 using the external Tucson Public Art Council selection process.

***Program Goals/Predicted Outcomes:**

This public art installation is to meet the 1% funds for public art as set in BOS Policy C 3.3 for a series of Regional Wastewater Reclamation Department Capital Improvement Projects as grouped together per Administration Procedure 3-16. This is the first of two installations.

***Public Benefit:**

This piece of artwork is designed to serve as both public art to enhance the environment and to also serve as a traffic counter (barometer) to track bicycle and pedestrian traffic on the Loop.

***Metrics Available to Measure Performance:**

The artwork will be installed to match the proposal as approved by the TPAC art selection committee.

***Retroactive:**

No

To: COB-10-2-18
Ver. -1
Pgs - 18
(1)

Contract / Award Information

Document Type: CT Department Code: PW Contract Number (i.e., 15-123): 19-181
Effective Date: 10/16/18 Termination Date: 10/16/20 Prior Contract Number (Synergen/CMS): _____
☒ **Expense Amount: \$** 130,000 ☐ **Revenue Amount: \$** _____

***Funding Source(s) required:** Regional Wastewater Reclamation Department Obligations

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 22-73.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
Amendment No.: _____ AMS Version No.: _____
Effective Date: _____ New Termination Date: _____
Prior Contract No. (Synergen/CMS): _____

☐ Expense or ☐ 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): _____
Effective 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: Nancy Cole

Department: Public Works Administration, Project Management Office Telephone: 724-6312

Department Director Signature/Date: [Signature] Nancy Cole

Deputy County Administrator Signature/Date: [Signature]

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

ORIGINAL

Pima County Project Management Office Project: Artist Services for Bike Barometer: Project 1 Contractor: Bannerworks, Inc. dba Koryn Rolstad Studios P.O. Box 9446 Seattle, WA 98109 (206) 448-1003 koryn@krstudios.com Amount: \$130,000.00 Funding: RWRD Obligation Funds	<table border="1"><tr><td>CONTRACT</td></tr><tr><td>NO. <u>CT-PW-19-181</u></td></tr><tr><td>AMENDMENT NO. _____</td></tr><tr><td>This number must appear on all invoices, correspondence and documents pertaining to this contract.</td></tr></table> (STAMP HERE)	CONTRACT	NO. <u>CT-PW-19-181</u>	AMENDMENT NO. _____	This number must appear on all invoices, correspondence and documents pertaining to this contract.
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PROFESSIONAL SERVICES CONTRACT [Board of Supervisors or Procurement Director]

1. Parties, Background and Purpose.

- 1.1. Parties. This PROFESSIONAL SERVICES CONTRACT ("Contract") is between PIMA COUNTY, a body politic and corporate of the State of Arizona ("County"), and, BANNERWORKS, INC. DBA KORYN ROLSTAD STUDIOS, a Washington State corporation ("Contractor") (County and Contractor shall be referred to herein individually as a "Party", and collectively herein as the "Parties").
- 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 ("Arts Foundation") to conduct a "Call to Artists," and subsequently a selection panel recommended that the County incorporate Contractor's proposed artwork ("Artwork") into the Bike Barometer: Project 1 ("Project").

2. Term.

- 2.1. Original Term. This Contract is effective for two (2) calendar years, 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 (as defined below).
- 2.2. Extension Options. County may extend this Contract for up to one (1) calendar year ("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 Artwork, and Warranty provisions of Sections 7, 17, and 19, respectively, survive the termination of this Contract.

3. Scope of Services. Contractor will provide County with Artwork related goods and

1 

services (collectively, the "Goods and Services") more fully described in **Exhibit A** to this Contract, based on the dates and timelines described in **Exhibit B** hereto, or if **Exhibit B** 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 or contract 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 County relied on the following key personnel: Koryn Rolstad.

5. **Compensation and Payment.**

- 5.1. Rates; Adjustment. County will pay Contractor for the Goods and Services at the rates set forth in **Exhibit B**. Those rates will remain in effect during an Extension Option period unless Contractor, at least ninety (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 \$130,000.00 (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** 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 for the Goods and Services provided under this Contract per the schedule 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, 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 ("Required Insurance") satisfying the below requirements ("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. 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.

6.2. Insurance Coverage and Limits:

6.2.1. Commercial General Liability (CGL): Occurrence Form covering liability arising from premises, independent contractors, personal injury, bodily injury, and products-completed operations with minimum limits not less than \$1,000,000 Each Occurrence.

6.2.2. Business Automobile Liability: Liability coverage for owned, non-owned, and hired vehicles used in the performance of this contract with limits in the amount of \$1,000,000 combined single limit. The required Automobile Insurance 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 automobile related claims resulting from an 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.

6.3. Additional Coverage Requirements:

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

6.3.1. Additional Insured Endorsement: General Liability and Business Automobile Liability Policies shall be endorsed to include Pima County, its agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

6.3.2. Subrogation Endorsement: General Liability and Business Automobile Liability Policies shall each contain a waiver of subrogation endorsement in favor of Pima County and its agents, and employees for losses arising from work performed by or on behalf of the Contractor.

6.3.3. Primary Insurance Endorsement: Contractor's policies shall stipulate that the insurance afforded by the Contractor shall be primary and that any insurance carried by Pima County, or agents, officials, or employees of Pima County will be excess and not contributory insurance.

- 6.3.4. Insurance Deductibles: Required Insurance policies may not obligate the County to pay any portion of a Contractor's deductible. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.
- 6.3.5. 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.
- 6.3.6. 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.
- 6.4 Notice of Cancellation: For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to Pima County, within two (2) business days of receipt of notice, if a policy is suspended, voided, or cancelled for any reason. Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to the Pima County Contracting Representative. Notice shall include the Pima County project or contract number and project description.
- 6.5 Verification of Coverage:
- 6.5.1 Contractor shall furnish to Pima County evidence of the Required Insurance by providing a current Certificate of Insurance with a signature on the certificate of an authorized representative of the insurer.
- 6.5.2 All certificates and endorsements are to be received and approved by Pima County before work commences. Each insurance policy required by this Contract must be in effect 10 days prior to work under this Contract. Failure to maintain the insurance coverages or policies or provide evidence of renewal, is a material breach of contract.
- 6.5.3 The required Certificate of Insurance shall be sent directly to the appropriate County Department with the Pima County project/contract number and project description documented on the certificate.
- 6.5.4 Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation waiver endorsements for the County, its departments, officials and employees.
- 6.6 Approval and Modifications:

Pima County Risk Management reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action. Neither 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 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. **Alteration 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, and except as provided in Section 17.2.6, **Contractor hereby waives all rights under 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 to the extent reasonably practicable:

17.2.1. Notice. If time permits, County will 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 will notify Contractor within 30 calendar days after such alteration.

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 will be without charge by Contractor unless otherwise specifically agreed to 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, 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.

17.2.4. Removal by Contractor. If time permits, if County intends to take an action that will destroy the Artwork, including, but not limited to, destruction of all or part of the project site, and County determines that it will not remove and preserve the Artwork itself, County will 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 will 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 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).

- 17.2.6. 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 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.

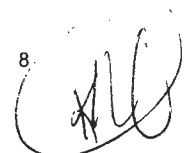
18. Copyright.

- 18.1. Copyright. Subject to licenses granted to County hereunder, Contractor will retain all 17 U.S.C. §106 copyrights in the Artwork and all other 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 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. Contractor's President Koryn Rolstad grants County a personality rights license pertaining to Contractor's services provided under the Agreement (the "Personality Rights License"; as provided in EXHIBIT C to this Agreement). Contractor must reasonably assist County with the development of materials describing the artist and the creation of the Artwork. County shall give Contractor reasonable notice of any inauguration or public dedication of the Artwork so as to allow for Contractor's attendance at such ceremonies.

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 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 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, 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 Contractor's services rendered prior to termination.

21. **Notice**. Any notice required or permitted by a Party 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

Contractor:



Koryn Rolstad
President

201 N. Stone Ave, 2nd Floor
Tucson, AZ 85701
(520)724-6312

Bannerworks, Inc.

P.O. Box 9446
Seattle, WA 98109
(206)448-1003

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 upon reasonable notice to Contractor to inspect the books and records of Contractor in order to verify Contractor'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 27 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. **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.
29. **Entire Agreement**. This Contract and exhibits hereto constitute 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.

Handwritten signature and initials, possibly "KIG", with a circled "1" next to it.

ORIGINAL

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

PIMA COUNTY

Richard Elias, Chairman, Board of
Supervisors

Date: _____

CONTRACTOR

BANNERWORKS, INC. DBA KORYN ROLSTAD
STUDIOS

Koryn Rolstad, President

Date: August 30, 2018

ATTEST:

Clerk of the Board

Date

APPROVED AS TO FORM:

Deputy County Attorney

CHRISTOPHER STRAUB

Print DCA Name

9.11.2018
Date

APPROVED AS TO CONTENT:

Nancy Cole, Public Works Admin

9.11.18
Date.

KML

EXHIBIT 'A'

Scope of Work

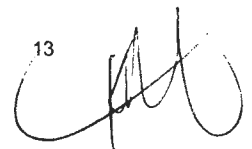
Artist Services for Bike Barometer: Project 1

This EXHIBIT A is issued to and made a part of that certain PROFESSIONAL SERVICE CONTRACT ("Contract") by and between County and Contractor. Unless otherwise provided, any word or phrase not otherwise defined in this EXHIBIT will have the meaning ascribed in the Agreement.

During the Term of this Contract, Contractor shall perform professional services for the County in connection with the 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 the 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 (1) conceptual design of 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 that explains how the NTE Amount shall be expended (the "Budget"). Such 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 of the Artwork ("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 of the Artwork has been selected, Contractor shall prepare final 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 the Contractor's designated engineer for the Project (the "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 Goods and 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 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. Designating a County 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 Goods and Services under this Contract.

II. Fabrication and Installation

- A. Contractor must receive written approval from the County of the Final Design of the Artwork before proceeding with fabrication and installation. Contractor shall fabricate the Artwork 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 Project meetings, as necessary to review construction plans and specifications, and for field reviews.
- C. Contractor shall make any necessary and reasonable 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 Project 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 the Artwork is completed, County shall provide the Arts Foundation for Tucson 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 (5) high resolution digital



ORIGINAL

images (jpgs. Or pngs in rgb color mode at 2000pk wide or larger at 72ppi), of the completed artwork to the County and the Arts Foundation for use on the Arts Foundation website.

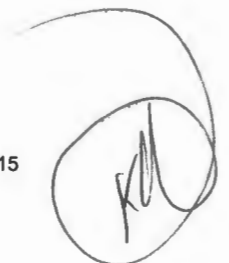
A handwritten signature or set of initials, possibly 'KM', enclosed within a hand-drawn circle. The signature is written in dark ink.

EXHIBIT 'B'

PAYMENT

Artist Services for Bike Barometer: Project 1

This EXHIBIT B is issued to and made a part of that certain PROFESSIONAL SERVICE CONTRACT ("Contract") by and between County and Contractor. Unless otherwise provided, any word or phrase not otherwise defined in this EXHIBIT will have the meaning ascribed in the Agreement.

- A. In consideration of the performance and service described in the Scope of Services, County shall pay Contractor the NTE Amount and Contractor shall charge County only in accordance with those same amounts. Checks for payment shall be issued to Bannerworks, Inc (dba Koryn Rolstad Studios)
- B. The County shall pay Contractor the NTE Amount in accordance with the schedule provided herein. Payments will be due after completion of the scheduled tasks and acceptance by County, except that County will advance costs for the purchase of materials and for the first 50% of the fabrication of the Artwork.

[Schedule Attached]

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a series of loops and a final vertical stroke.

ORIGINAL

**Pima County Project Management Office
Public Artist Services for Bike Barometer: Project 1
EXAMPLE PAYMENT & INVOICING / SPREAD SHEET FOR KRS & PROJECT CLIENT**

Artist Name Koryn Rolstad
Firm Name Bannerworks Inc. (dba) Koryn Rolstad Studios
Address PO Box 9446
 Seattle, WA 98109
Email koryn@krstudios.com
Phone No. (206) 448-1003

Invoice No.:	TBD
Invoice Date:	
Contract No.:	Professional Service Contract

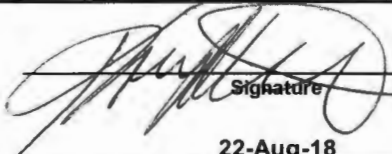
Contract Deliverable(s)	Authorized Amount	Cost Account	Current Invoice	Previously Billed	Total Billed to Date
Design					
Payment #1	\$32,000.00	CONTRACT	\$0.00		\$0.00
To initiate Full set of drawings for design development through fabrication site up to 3 community visits					
Subtotal		\$32,000.00	\$0.00	\$0.00	\$0.00
Materials and 50% of Fabrication					
Payment #2	\$41,250.00		\$0.00	\$0.00	\$0.00
50% of Fabrication and Shipment to Site					
Payment #3	\$41,250.00		\$0.00	\$0.00	\$0.00
			\$0.00	\$0.00	\$0.00
Subtotal		\$82,500.00	\$0.00	\$0.00	\$0.00
Intalation & Final Payment after acceptance					
Payment #4	\$15,500.00				
		\$15,500.00	\$0.00	\$0.00	\$0.00
Subtotal			\$0.00	\$0.00	\$0.00
		\$130,000.00			

TOTAL **\$130,000.00**

\$0.00	\$0.00	\$0.00
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REMIT PAYMENT TO:

Bannerworks Inc. (dba) Koryn Rolstad Studios
PO Box 9446
Seattle, WA 98109


 Signature
 22-Aug-18

Kn

ORIGINAL

EXHIBIT 'C'

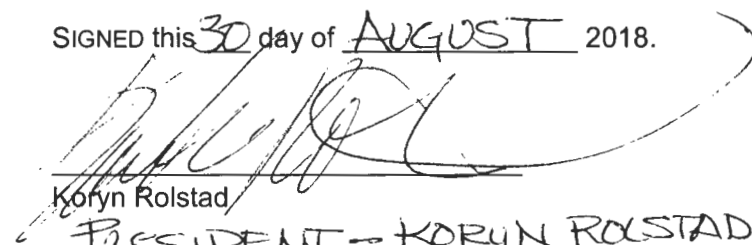
PERSONALITY RIGHTS LICENSE

This EXHIBIT C is issued to and made a part of that certain PROFESSIONAL SERVICE CONTRACT ("Contract") by and between County and Contractor. Unless otherwise provided, any word or phrase not otherwise defined in this EXHIBIT will have the meaning ascribed in the Agreement.

The Personality Rights License is as follows:

I, Koryn Rolstad, President of Contractor, grant County a non-exclusive, non-sublicensable license, to use my name, likeness, and biographical information, in connection with the display or reproduction and distribution of the Artwork including County advertising and promotional materials. All rights not expressly stated in the Exhibit are expressly reserved.

SIGNED this 30 day of AUGUST 2018.


Koryn Rolstad

PRESIDENT - KORYN ROLSTAD
STUDIOS.