



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

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 5/21/19

\* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Madeline Wiener Sculptor, Inc.

**\*Project Title/Description:**

Artist Services for Kino South Sports Complex

**\*Purpose:**

The purpose of this service is to design, fabricate and install a public art piece at the Kino South Sports Complex to meet the BOS Policy relating to public art.

**\*Procurement Method:**

Procurement 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.

**\*Public Benefit:**

This piece of artwork is designed to serve as public art to enhance the environment at the Kino South Sports Complex.

**\*Metrics Available to Measure Performance:**

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

**\*Retroactive:**

No

10: CoB- 5-8-19  
Ver. - 1  
pgs - 15  
(1)

**Contract / Award Information**

Document Type: CT Department Code: PW Contract Number (i.e., 15-123): 19-455  
Effective Date: 05/21/19 Termination Date: 05/20/20 Prior Contract Number (Synergen/CMS): \_\_\_\_\_  
☒ **Expense Amount: \$** 135,000 ☐ **Revenue Amount: \$** \_\_\_\_\_

**\*Funding Source(s) required:** Kino Stadium District Funded 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 22-73.*

**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] 5.6.19

Deputy County Administrator Signature/Date: [Signature] 5/7/19

County Administrator Signature/Date: [Signature] 5/7/19  
(Required for Board Agenda/Addendum Items)

**Pima County Project Management Office**

**Project: Artist Services for Kino South Sports Complex**

**Contractor:**

Madeline Wiener Sculptor, Inc.  
816 Acoma Street, #1006  
Denver, Colorado 80204  
United States  
720-365-5536  
[madeline@madelinewiener.com](mailto:madeline@madelinewiener.com)

**Amount: \$135,000.00**

**Contract No.: CT-PW-19\*455**

**Funding: Kino Stadium District Funded COPS**

**PROFESSIONAL SERVICES 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 Madeline Wiener Sculptor, Inc. ("Contractor").
- 1.2. Authority. County selected Contractor pursuant to and consistent with Board of Supervisors Policy C3.3 and Pima County Administrative Procedure 3-16.
- 1.3. Solicitation. Pursuant to the County's Public Art Program, the County directed the Arts Foundation for Tucson ("Arts Foundation") to conduct a "Call to Artists," and subsequently a selection panel recommended that the County incorporate the Contractor's artwork ("Artwork") into the Artist Services for Kino South Sports Complex.

**2. Term.**

- 2.1. Original Term. This Contract is effective for (1) calendar year, commencing on the date that it is fully executed by the parties (the "Initial Term"). "Term," when used in this Contract, means the Initial Term plus any exercised Extension Options.
- 2.2. Extension Options. County may extend this Contract for up to (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 the products and/or services ("Goods and Services") described in **Exhibit A** (2 pages), at the dates and times described on **Exhibit A** or, if **Exhibit A** contains no dates or time frames, then upon demand. The

Goods and Services must comply with all requirements and specifications in the Solicitation.

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

5. **Compensation and Payment.**

- 5.1. Rates; Adjustment. County will pay Contractor at the rates set forth in **Exhibit B** (1 page). Those rates will remain in effect during an Extension Option period unless Contractor, at least 90 days before the end of the then-existing Term, or at the time the County informs Contractor that the County intends to extend the Term, if that is earlier, notifies County in writing of any adjustments to those rates, and the reasons for the adjustments.
- 5.2. Maximum Payment Amount. County's total payments to Contractor under this Contract, including any sales taxes, may not exceed \$135,000.00 (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** do not include sales taxes. Contractor may invoice County for sales taxes that Contractor is required to pay on goods supplied to the County under this Contract. Contractor will show sales taxes as a separate line item on invoices.
- 5.4. Timing of Invoices. Contractor will invoice County on a monthly basis unless a different billing period is set forth in **Exhibit B**. County must receive invoices no more than 30 days after the end of the billing period in which Contractor delivered the invoiced products or services to County. County may refuse to pay for any product or service for which Contractor does not timely invoice the County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months late.
- 5.5. Content of Invoices. Contractor will include detailed documentation in support of its invoices and assign each amount billed to an appropriate line item.
- 5.6. Invoice Adjustments. County may, at any time, 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 Coverages 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 must 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 must 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 must include the Pima County project or contract number and project description.

6.5 Verification of Coverage:

6.5.1 Contractor must 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 must 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 wavier 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) 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 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, 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 through the Arts Foundation at least 30 calendar days prior to



authorizing any alteration of the ARTWORK, at the last phone number or address provided by CONTRACTOR to the Arts Foundation. 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 the CONTRACTOR'S obligation to maintain current contact information with the Arts Foundation.

- 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 best 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, with or without cause, by serving a written notice upon Contractor at least 30 days before the effective date of the termination. In the event of such termination, County's only obligation to Contractor will be payment for services rendered prior to the date of termination.

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

20.3. Non-Appropriation. Notwithstanding any other provision in this Contract, County may terminate this Contract if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Contractor, other than to pay for services rendered prior to termination.

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

County:

Roy Flores  
201 N. Stone Ave., 2<sup>nd</sup> Floor  
Tucson, AZ 85701  
(520) 724-9302

Contractor:

Madeline Wiener Sculptor, Inc.  
816 Acoma Street, #1006  
Denver, CO 80204  
(702) 365-5536

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. **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)**

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

**PIMA COUNTY**

\_\_\_\_\_  
Chairman, Board of Supervisors

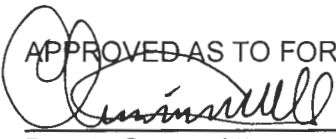
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy County Attorney

**CHRISTOPHER STRAUB**

\_\_\_\_\_  
Print DCA Name

5-3-2019

\_\_\_\_\_  
Date

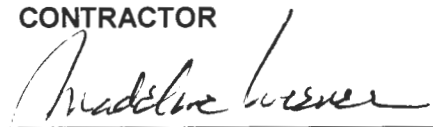
APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Nancy Cole Public Works Admin

5.3.19

\_\_\_\_\_  
Date

**CONTRACTOR**

  
\_\_\_\_\_  
BY: MADELINE LORENSE

Date: 4/26/19

## **EXHIBIT 'A'**

### **Scope of Work**

#### **Artist Services for Kino South Sports Complex**

During the term of this Contract, the Contractor, Madeline Wiener Sculptor, Inc., shall perform professional services for the County in connection with the above referenced project. This scoping document will be used to plan, conduct, and complete the Contractor's work on the project.

#### **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 Artwork.
- B. Contractor will work cooperatively with County, design team, contractors, and the local community as represented by the Community Advisory Committee. It is understood that the process of developing, reviewing, and approving an Artwork for the County is an open and transparent process which may include public participation and scrutiny.
- C. Contractor will initially prepare at least one conceptual design for the Artwork, and must submit these concepts to County staff and project manager for review. The conceptual design submittal will include information about the content, scale, location, context, relationship of components, and materials of the proposed Artwork.
- D. Contractor will submit a budget which explains how the contract amount will be expended. The budget must 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, will 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 will 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 will 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 will present designs of the proposed Artwork at public meetings to gather input and select a final design. Contractor must be available with reasonable advance notice for meetings, as necessary. Contractor will document community and design team input, feedback and outcomes.
- G. Once a final design has been selected, Contractor will prepare final design drawings, specifications, and materials samples, and will submit these to County for review and approval including review by Risk Management. Where applicable, Contractor will provide structural engineering drawings.
- H. If Artwork is integrated into roadway project construction plans, Contractor must provide detailed construction drawings with sufficient detail to install Artwork using standard construction methods. Contractor will coordinate with the Project Team to prepare and

finalize drawings and specifications that Design Engineer can include in the roadway design plans.

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

## **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 ARWORK in substantial conformity with the approved Final Design and, if applicable, approved engineering and construction documents.
- B. Contractor must be available with reasonable advance notice for meetings, as necessary to review construction plans and specifications, and for field reviews.
- C. Contractor must make any necessary modifications or revisions to the Artwork as requested by the County for a proper and structurally sound installation.
- D. If Contractor fabricates any portion of the Artwork themselves, Contractor is responsible for transporting Artwork to the site but will coordinate with the Project Manager.
- E. 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 the Contractor and County, subject to approval by the Arts Foundation and County prior to installation.
- F. When Artwork is completed, Contractor will provide the Arts Foundation and County a recommended annual maintenance protocol and schedule describing the media and techniques used to produce and install the Artwork the frequency of maintenance; materials and methods to be used; and an estimate of the costs of maintenance and preservation of the Artwork.
- G. When Artwork is completed, Contractor will provide a minimum of (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 the County and the Arts Foundation for use on the Arts Foundation website.



## **EXHIBIT 'B'**

### **PAYMENT**

#### **A. Artist Services for Kino South Sports Complex**

- A. In consideration of the performance and service described in the Scope of Services, County will pay Contractor the estimated amounts as set forth below, and Contractor will charge County only in accordance with those same amounts. Checks for payment will be issued and made payable to "Madeline Wiener Sculptor, Inc." Total payment for goods and services, including applicable sales taxes provided during the term of this Contract must not exceed \$135,000.00
- B. During the design phase, Contractor will be paid for design services including those of Contractor sub-consultants. Contractor will submit invoices to County with documentation that accurately defines progress towards completion of tasks, and the Contractor's estimate of the percentage of the task that is completed at the date of the submission.
- C. It is estimated that that no more than 30% of the total Contract, or \$40,500.00 will be expended for design services. Allowable costs include design time, materials for models/presentations, and labor. Only with prior authorization from the Project Manager will additional funds be expended during the design phase.
- D. It is estimated that no more than 70% of the total Contract, or 94,500.00 will be expended on Artwork materials, fabrication, transportation and installation. Contractor will submit itemized invoices for services based upon the mutually agreed upon schedule and final design plans provided at the 100% design milestone.
- E. County will retain 10% of the total contract amount until Contractor has submitted the required plaque, final photos, annual maintenance protocol, and the Artwork has been certified complete.