



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: August 19, 2019

* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Southern New Hampshire University, a New Hampshire non-profit corporation ("SNHU")

***Project Title/Description:**

Lease Agreement with SNHU ("Lease") at 97 East Congress ("Premises") for use of Premises to provide learning support services to its student body.

***Purpose:**

This Lease allows SNHU, a non-profit, private coeducational, nonsectarian accredited institution with its main campus located in New Hampshire, as well as its approved subtenants, general office space so SNHU may provide increased access to live learning support services for its on-line students primarily located in the western time zones.

***Procurement Method:**

This is a non-procurement contract and is exempt from procurement rules.

***Program Goals/Predicted Outcomes:**

SNHU's on-line students in western time zones will have access to student learning support services during evening hours. This allows for easier and quicker access to these services resulting in enhance support and better educational outcomes.

***Public Benefit:**

SNHU plans on hiring approximately 300 positions from the Tucson area population with initial average wages of approximately \$44,420. SNHU expects the average wage to increase to approximately \$48,344 by the 5th year of occupancy. SNHU will utilize local business services in support of its operations, access local restaurants and entertainment venues, all which results in a positive impact to Pima County's economy.

***Metrics Available to Measure Performance:**

Creation and retention of approximately 300 employment opportunities with hiring from local communities; Enhanced on-line student learning support services to students located primarily in western time zones; Payment of rent to County; Positive contribution to the economic climate of County by using local business services and entertainment venues.

***Retroactive:**

No.

ALG 14'19M1029PCC/KCF RD
gla

TO: COB 8-14-19 (2)
Vers.: 1
pgs.: 24

Contract / Award Information

Document Type: CTN Department Code: FM Contract Number (i.e., 15-123): 20*032
Effective Date: 08/19/2019 Termination Date: 08/31/2029 Prior Contract Number (Synergen/CMS): _____
☐ Expense Amount: \$* _____ ☒ Revenue Amount: \$ 9,630,898.69

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

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: Roberta Small

Department: Facilities Management

Telephone: 520-724-9870

Department Director Signature/Date: [Signature] 8/12/19

Deputy County Administrator Signature/Date: [Signature] 8-12-19

County Administrator Signature/Date: [Signature] 8/13/19

(Required for Board Agenda/Addendum Items)

LEASE AGREEMENT

This Lease Agreement ("**Lease**") is entered into as of August 19, 2019 (the "**Effective Date**") by and between SOUTHERN NEW HAMPSHIRE UNIVERSITY, a New Hampshire non-profit corporation ("**SNHU**"), and PIMA COUNTY, a political subdivision of the State of Arizona ("**County**").

1. **Background and Purpose.**

- 1.1. County owns a building (the "**Building**") located at 97 E. Congress Street, in the City of Tucson, Arizona, which contains approximately forty-four thousand three hundred and forty one (44,341) rentable square feet ("**RSF**") of interior space as well as an exterior landscaped courtyard area. The site plan for the Building is shown on **Exhibit A**. The current furniture layout is shown on **Exhibit B**.
- 1.2. The Building's RSF was calculated by County using its modified Building Owner's and Managers' Association (BOMA) method for calculating square footage.
- 1.3. SNHU is a non-profit, private, coeducational, nonsectarian accredited institution with its main campus situated between Manchester and Hooksett in New Hampshire. SNHU is looking to better serve its on-line student population in western time zones.
- 1.4. SNHU has, in part because of Tucson's close fit with SNHU's culture and lifestyle and because of County's willingness to enter into this Lease, decided to locate a new operations center in Tucson Arizona to better support its growing on-line student population.
- 1.5. By locating its new operation center in Tucson, on-line students will have expanded access to live student services in western time zones. SNHU plans on hiring from the Tucson community to fill approximately 300 positions located at 97 East Congress, and anticipates that those jobs will have an average wage of approximately \$44,420 in the first year and up to \$48,344 by the fifth year.
- 1.6. County has authority, pursuant to A.R.S. § 11-254.04, to enter into leases of County-owned property for economic-development purposes. The Board of Supervisors has determined that leasing the Building to SNHU under the terms set forth in this agreement will "assist in the creation or retention of jobs" and "otherwise improve or enhance the economic welfare of the inhabitants of the county."
- 1.7. County staff obtained an appraisal of the fair rental value of the Premises, and the rental rate in this Lease is based on that appraisal.

2. **Lease/Premises.**

- 2.1. **Lease.** In consideration of rent monies and all terms, conditions, covenants, and agreements contained herein, County hereby leases to SNHU and SNHU hereby leases from County, the entire Building and the associated outside courtyard area (the "**Premises**").

from County, the entire Building and the associated outside courtyard area (the “**Premises**”).

- 2.2. **Condition of Premises.** County will deliver the Premises in its “as-is” condition, but warrants that, to the best of the actual knowledge of the Director of Pima County Facilities Management, as of the Effective Date, (i) subject to the work to be done by County under Section 4.3 below, the existing HVAC, electrical and plumbing systems, and the showers and locker room are in good working condition; (ii) the Premises is in compliance with all applicable codes and regulations pursuant to any federal, state or local law or regulation (e.g., ADA, fire and building codes) (“Applicable Law”). If the Building is discovered to be out of compliance with Applicable Law during the Term, County will promptly use its best efforts to bring the Building into compliance at County’s expense, while using reasonable efforts to minimize disruption of Tenant’s operations.
3. **Term.** This Lease will be for an initial term beginning on the Effective Date and ending August 31, 2029. The Rent shall commence starting September 1, 2019 (the “**Rent Commencement Date**”).
 - 3.1. **Cancellation Contingency.** SNHU has submitted its formal request to the Arizona Board of Education for approval to operate in Arizona. SNHU anticipates approval of this request. If approval is denied and SNHU is prohibited from operating in Arizona, then the Lease will be void. All obligations between County and SNHU will be cancelled and no compensation will be owed by either party.
 - 3.2. **Options to Extend.** If SNHU is not in default under the Lease, SNHU may extend the Initial Term of the Lease for up to 2 additional 5-year periods (each, an “**Extension Term**”) by providing written notice to the County 12 months prior to end of the Initial Term or the prior Extension Term, as applicable. “Term” means the initial term and any Extension Term(s) exercised by SNHU.
 - 3.3. **Lease Termination Option.** SNHU may, at its sole discretion, terminate the Lease as of September 1, 2024 by providing the County 9 months prior written notice.
4. **Tenant Improvements.** Following the Effective Date, if SNHU has obtained the insurance required under Section 15 below, SNHU and its contractors and utility providers may enter the Premises to install IT infrastructure, furniture, fixtures and equipment (FF&E), reconfigure the furniture layout, as provided below, and make any other County-approved Alterations to the Premises (see Section 14 below).
 - 4.1. **County Furniture.** County will leave in place the systems furniture currently installed in the Premises and SNHU may use this furniture during the entire Term.
 - 4.2. **Reconfiguration; Additional Furniture.** SNHU will, at its cost, reconfigure the existing furniture set-up to accommodate approximately 100 additional seats. County will make

available to SNHU all surplus systems furniture that the County currently owns and has access to, at no cost, for SNHU's use in the reconfiguration. If SNHU needs additional furniture, County will acquire it from County vendor and supply it to SNHU. All associated costs for the furniture reconfiguration, including the cost of any furniture or parts purchased by the County, as well as designer time, will be paid by SNHU. SNHU will, within 30 days of receipt of an invoice from County, reimburse County for those costs. County will provide Tenant with cost estimates before purchasing furniture or parts or commencing associated work.

- 4.3. **HVAC.** In coordination with SNHU, and based on SNHU's final configuration of the Premises, County will, at its expense, replace the existing fan coil units in the HVAC system.
- 4.4. **Surrender of County Furniture.** If at any point SNHU no longer wishes to use any furniture provided by County, it may remove the furniture and return it to County.
5. **Move-In.** SNHU may move its employees into the Premises as the above work is completed.
6. **Parking.** In addition to the Premises, County will provide SNHU 230 parking spaces in the County-owned parking garage on Scott Avenue adjacent to the Premises (the "SAG"). County will, at SNHU's request, provide SNHU up to 70 additional spaces in the other County-owned parking garages in the downtown area.
 - 6.1. SNHU will initially pay County \$85 per parking space per month. This monthly charge will increase \$2 per parking space per month on each anniversary of the Rent Commencement Date.
 - 6.2. SNHU's employees will work with Pima County Facilities Management, Parking Operations division, to get parking permits issued and assigned to individuals. The individuals to whom permits are assigned will be required to fill out standard County paperwork for monthly parking, but County will directly invoice SNHU on a monthly basis for the parking fees. Individuals to whom permits are assigned will be required to comply with all County parking-garage procedures and rules.
 - 6.3. SNHU will begin paying for parking spaces, at the rate then in effect, as and when permits are issued and assigned to its employees, except that SNHU will begin paying for at least the following number of permits by the following dates, even if fewer than that number have been issued at that point: 140 permits by December 1, 2019, and 230 permits by June 1, 2020.
7. **Use.** The Premises may be used by SNHU and its approved subtenants for, and only for, general office use, to provide learning support services to its student body, and ancillary uses related to SNHU's and its approved subtenant's occupancy.

- 7.1. **Licensure.** SNHU will apply for and obtain any license, registration or permit that is required during the Term of this Lease for its operations on the Premises and will maintain such license, registration or permit in good standing throughout the Term of this Lease.
- 7.2. **Tax-Exempt Status.** SNHU will, at all times during the Term of this Agreement, be a nonprofit organization exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code, 26 USC § 501(c)(3). SNHU will notify County in writing of any rulings for any governmental authority affecting such status.
- 7.3. **Prohibited Activities:** SNHU will not permit any unlawful activities on the Premises or any activities that unduly interfere with activities of the neighboring property owners/occupants.

8. **Rent.**

- 8.1. **First Year.** For the first three full months of the Term following the Rent Commencement Date, SNHU will pay to County rent for the Premises in the amount of \$14,318.45 per month. For the next three months of the Term, SNHU will pay County rent in the amount of \$28,636.90 per month. For the next six months, SNHU will pay County rent in the amount of \$57,273.79 per month, which is based on a rate of \$15.50 per RSF per year.
- 8.2. **Annual Increases.** On each anniversary of the Rent Commencement Date during the Term (including Extension Terms), the rental rate will increase 1.5% over the previous rate. (For the second year, the annual rent will be \$697,594.80.)
- 8.3. **Rent During Extension Terms.** Base rent for the initial year of an Extension Term will be the lesser of (i) ninety-five percent (95%) of the fair market rental value for the premises (“**FMV**”); and (ii) an amount that is 1.5% higher than the rent paid during the final year of the preceding Term or Extension Term, as applicable. During the thirty (30) day period following receipt by County of SNHU's notice of intent to renew, County and SNHU will negotiate in good faith concerning the FMV for the relevant Extension Term. If during such thirty (30) day period the parties are unable to agree on the Rent payable during such Extension Term, then each party will promptly appoint an appraiser with an MAI designation from the American Institute of Real Estate Appraisers and at least ten (10) years of experience in appraising fair market rents of properties comparable to the Building. Each of the appraisers will then determine, without consultation with the other appraiser and as of a valuation date that is ninety (90) days before the commencement date of the relevant Extension Term, the fair market rent for the Property. The appraisals must be completed no later than one hundred eighty (180) days before the commencement date of the relevant Extension Term. If the lower of the two appraisals is 95% or more of the higher appraisal, then the fair market rent will be the average of the two figures arrived at by the appraisers. If the lower appraisal is less than 95% of the

higher appraisal, the two appraisers will promptly select an independent third appraiser who will select one or the other of such two appraisals as the fair market rent. County and SNHU will each bear the cost of its appraiser, and will each pay half of the cost of any third appraiser.

- 8.4. **Rent Payments.** SNHU will pay rent in advance, in equal monthly installments of 1/12 the annual rent amount (except as provided in Section 8.1 above) on or before the first day of each month during the Term. Rent must be delivered to Pima County Government, Finance-Revenue Management Division, 33 N. Stone, 6th Floor, Mail Stop DT-BAB6-404, Tucson, Arizona 85701. SNHU will pay interest (simple interest, not compounded) on any late payments of rent, or any other sum due under this Lease that is not paid when due, at the rate of 8% per annum from the date due until paid.
- 8.5. **Taxes.** In addition to rent, SNHU will pay when due all taxes charged against personal property belonging to Tenant (specifically excluding furnishings that are the property of County). SNHU will reimburse County for any transaction privilege taxes the County is required to pay related to the rent paid to the County under this Lease. County will, at its expense, pay when due all property taxes due with respect to the Building and premises. Because SNHU is exempt from taxation under § 501(c)(3) of the internal revenue code, the Premises is currently exempt from GPLET under A.R.S. § 42-6208(13). If SNHU loses the benefit of GPLET exemption during the Term, SNHU shall be responsible to pay the GPLET directly to the state when due. Within 30 days after execution of this Lease, the parties will execute and the County will record a memorandum of this Lease in compliance with A.R.S. § 42-6202(C)(1), and the County will provide the County Treasurer with a copy of this Lease as required by A.R.S. § 42-6202(C)(2).

8.6. **SNHU to provide financials upon request.**

9. **Sublease and Assignment.**

- 9.1. **As of Right.** SNHU may, at its option, assign its rights and obligations under this Lease, or sublease all or any portion of the Premises to any subsidiary or affiliated company. SNHU may also assign its rights and obligations under this Lease to any entity into which SNHU is merged, any new entity resulting from a consolidation with another entity, and any entity that purchases substantially all the assets of SNHU. A change in corporate control of SNHU will not constitute an assignment.
- 9.2. **With County's Consent.** SNHU may, with County's prior written consent, which will not be unreasonably withheld conditioned or delayed, sublease all or any portion of the Premises. SNHU will pay to County half of the amount by which the rent and other charges paid by any subtenant to SNHU exceeds the Rent paid by SNHU under this Lease with respect to the area occupied by the subtenant, after first deducting SNHU's direct and reasonable costs of entering into the sublease.

10. Repairs, Utilities & Services.

- 10.1. Repairs.** Subject to Section 21 of this Lease concerning damage resulting from a casualty, and subsection 10.2 below, County will, at County expense, maintain and repair, in the same condition as on the Rent Commencement Date, the interior and exterior of the Building, including interior walls, carpeting, exterior and load-bearing walls, curtain walls, the roof, roof trusses, exterior glass and mullions, columns, beams, shafts (including elevator shafts), stairs, stairwells, elevator cabs, entrances, washrooms, mechanical, electrical closets, sprinkler system, floor/ceiling slabs, foundation, gutters and downspouts, plazas, pavement, sidewalks, curbs, all building mechanical equipment and systems (including plumbing and electrical systems and the heating, ventilation and air-conditioning systems). County will also maintain the landscaping in the exterior patio area, the planters, and the ramp area behind the Building.
- 10.2. Tenant Damage.** SNHU will promptly repair any damage done to the Premises by any employee, agent, contractor or invitee of SNHU. SNHU will also be responsible for any maintenance or repairs necessitated by any use of all or a portion of the Premises for other than normal and customary business office operations and/or to the extent required because of SNHU's installation of improvements or alterations that are not normal, typical and customary business office improvements.
- 10.3. Notification to County.** If a repair is needed, for which County is responsible, SNHU will notify County by email addressed to FM-TenantRequest@pima.gov, and County will make any necessary repairs and/or replacements within a reasonable period of time.
- 10.4. Utilities.** County will, at its expense, provide all utilities for the Premises, including electricity, water, sewer, and trash-and-recycle-collection services, but not including telecommunication services. SNHU will conduct its operations in the Premises in a manner that reasonably minimizes utility costs to the same extent as would a reasonable tenant or owner who pays the utility costs.
- 10.5. Telecommunications.** SNHU will install its own telecommunication systems and equipment including telephone, data and internet, will be responsible for maintaining the systems and equipment and will directly pay for such services and equipment. SNHU will obtain internet/data network connection(s) from a local ISP and will maintain it at its own expense. SNHU will use its own ISP connection hardware. SNHU is responsible for securing SNHU's networks against intrusion.
- 10.6. Heating, Ventilation and Air-Conditioning (HVAC).** SNHU will have the ability to control its HVAC operation, at minimum, on a per floor basis. County will provide HVAC from 8:00 am to 8:00 pm Monday through Friday (Building Hours). After-hours HVAC may be requested by contacting Facilities Management through the FM-Tenant-Request@pima.gov email address with at least forty-eight hours advance notice. SNHU

will pay County a standard hourly charge—currently \$35.00—for afterhours HVAC, payable in the same manner as rent within thirty days from receipt of invoice.

- 10.7. **Equipment.** SNHU will maintain, repair and replace all fixtures and equipment provided and installed by SNHU, including but not limited to security cameras, office equipment, kitchen appliances, conference room appliances and other equipment, which may include vending services equipment, and furniture (including all furniture provided by County).

11. **Janitorial.**

- 11.1. **Responsibility.** SNHU will obtain and pay for janitorial services for the Premises. County will provide SNHU with any manufacturer recommendations regarding how to clean and maintain certain existing interior fixtures and SNHU will follow those recommendations.

- 11.2. **Insurance.** SNHU will ensure that its janitorial contractor obtains and maintains, during the entire period that it is performing work in the Premises, commercial general liability insurance of \$1,000,000 per occurrence, and workers' compensation insurance in statutory amounts if required by law, and will require the contractor to name County as an additional insured on the liability policy. SNHU will provide proof of this insurance to County prior to the janitorial contractor performing any work in the Premises.

12. **Security and Access.**

- 12.1. **Hours of Access.** SNHU will have access to the Premises twenty-four (24) hours a day, seven (7) days per week, three hundred sixty-five days (365) days per year.

- 12.2. **Security Services.** SNHU will provide for its own security services and access technology, at its own expense. SNHU will provide to the County the necessary measures to allow County the ability to access the Premises under the conditions set forth below.

- 12.3. **County Access to the Premises.** SNHU will permit County and County's authorized representatives to enter the Premises at times reasonably convenient to both SNHU and County for purposes of inspection, repairs and performance of work necessary for County to comply with its obligations under this Agreement. In the performance of any such work, which is expected to occur primarily during, but not limited to, normal County business hours (8:00 am-5:00 pm), County will cause as little inconvenience, annoyance, disturbance, or damage to SNHU as reasonably possible under the circumstances.

- 12.4. **Emergency Access.** County may access the Premises at any time should County be required to response to any emergency situation at the Premises. SNHU will provide keys to first responders.

13. **Signs.**

13.1. **Installation and Maintenance.** SNHU may install exterior and interior signage at its expense, and will maintain, repair and replace all installed signs at its expense. SNHU will remove all exterior signs, and repair any damage done by the removal, at the expiration or termination of the Term.

13.2. **Exterior Signs.** Exterior signs must comply in all respects with the City of Tucson sign codes and are subject to County's approval, which will not be unreasonably withheld. Subject to City sign code requirements, exterior signage may be placed at the top of the Building on both the South and West facing walls. County will not install or permit others to install any signs on the Premises.

14. **Alterations.** SNHU may from time to time during the Term make changes, alterations, additions, substitutions or improvements to the Premises (collectively, "**Alterations**"), at its sole cost and expense, as set forth below:

14.1. **Minor Alterations.** SNHU may make alterations, additions and improvements to the Premises ("**Alterations**") that are nonstructural and cost less than \$25,000 without County's advance approval. However, if cosmetic Alterations substantially alter the appearance of the Premises, SNHU will provide information regarding those Alterations to the County for informational purposes only.

14.2. **Major Alterations.** SNHU may make structural Alterations, which includes removing walls, changing ceilings, constructing new or closing off existing interior or exterior door openings, or modifying the electrical, plumbing, security, fire sprinkler, or HVAC systems, and Alterations that cost more than \$25,000, only with the County's prior written approval of SNHU's plans and specifications, which County will not unreasonably withhold, condition, or delay. County acknowledges that SNHU may install a full-service kitchen or interconnecting stairs. County shall not charge SNHU any oversight, coordination, or management fees in association with Alterations.

14.2.1. SNHU will require all of its contractors to name the County as additional insured on all insurance policies covering work performed. SNHU will require payment and performance bonds that comply with the requirements of Title 34, Arizona Revised Statutes.

14.2.2. SNHU will give County a complete set of "as-built" drawings and copies of all duly issued Final Inspections and Certificates of Occupancy documents within fifteen (15) calendar days after completion of construction.

14.3. **Quality.** All Alterations will be carried out by SNHU using licensed contractors and subcontractors in good standing with the Arizona Registrar of Contractors and reasonably acceptable to County. Alterations will be made in a good and workmanlike manner in

compliance with all codes and other applicable laws and regulations, and in compliance with any County-approved Plans.

14.4. **Liens.** SNHU will timely pay all contractors, subcontractors, mechanics, laborers, or materialmen providing materials or services with respect to the Alterations, and will not permit any lien to attach to the Premises or any interest therein, and will indemnify and defend County against all legal costs and charges resulting from any such lien.

14.5. **Removal of Alterations.** SNHU, upon Lease expiration, will not be required to remove any wiring, cabling or any improvement or alterations made by SNHU, whether as part of the initial buildout or as a later Alteration.

15. **Insurance.**

15.1. **County.** County is responsible for fire and other property insurance for the Premises, and may self-insure for such losses.

15.2. **SNHU.**

15.2.1. SNHU will obtain, before taking possession of the Premises or doing any work in the Premises, and thereafter maintain in full force and effect at all times during the Term, at its sole expense, the following insurance: (1) a commercial general liability insurance policy (on an occurrence basis) insuring against all claims for personal injury, death or property damage occurring upon, in or about the Property, with combined single limits of at least \$2,000,000 per occurrence, including broad form blanket contractual coverage, covering all activities on the Premises and all of SNHU's obligations under this Agreement, naming County as an additional insured; (2) worker's compensation and employers liability insurance; (3) automobile and motor vehicle insurance covering all operations of SNHU and all vehicles and equipment used by SNHU; and (4) any other form or amount of insurance as County may reasonably require from time to time. SNHU will obtain, or will cause its contractor to obtain, Builder's Risk insurance covering any Major Alterations on the Premises as requested by the County on a project-by-project basis.

15.2.2. Such insurance policies must: (i) be written and issued by insurance companies licensed to issue policies in the State of Arizona and rated "A/VII" or better by A.M. Best Co. in Best's Key guide; and (ii) include a waiver of subrogation endorsement (or equivalent) in favor of County and its respective agents, employees, partners, directors and officers. SNHU's insurance will be primary insurance and non-contributory with respect to all other available sources.

15.2.3. Before beginning its operations on the Premises, SNHU will furnish to County reasonably satisfactory evidence (including, without limitation, certificates of

insurance and additional insured endorsements) that SNHU maintains insurance in accordance with the terms of this Section.

16. Default.

16.1. Tenant Default. The occurrence of any one or more of the following events will constitute a default and breach of this Lease by SNHU for which County may terminate this Lease:

16.1.1. *Monetary Obligations.* The failure by SNHU to make any payment required to be made by SNHU under this Lease, as and when due, where such failure continues for a period of 21 calendar days after notice from County that the payment is due.

16.1.2. *Violation of Law.* Use of the Premises for any unlawful or illegal purpose, which use continues for a period of 5 days after written notice from County; provided that SNHU will not be entitled to the benefit of more than one such 5-day grace period during the Term.

16.1.3. *Health and Safety Violation.* Any action or omission by SNHU that, in the County's reasonable judgment, causes a threat to the health or safety of the general public or the users of the Building, which continues for a period of 5 days after written notice from County. SNHU's failure to obtain and maintain any required license and/or registration for its operations at the Premises is considered a violation under this paragraph.

16.1.4. *Other Covenants.* The failure by SNHU to observe or perform any other of the covenants, conditions or provisions of this Lease to be observed or performed by SNHU, where such failure continues for a period of 30 days after written notice from County to SNHU; provided, however, that if the nature of SNHU's default is such that more than 30 days are reasonably required for its cure, then SNHU will not be deemed to be in default if SNHU commences such cure within said 30-day period and thereafter diligently prosecutes such cure to completion provided such cure is completed within one hundred and twenty (120) days of the notice by County.

16.2. County Default. County will be deemed to be in default under this Lease if County fails to perform any covenant or condition of this Lease to be performed by County and such failure continues for 30 days after written notice and demand from SNHU (unless the failure is of such a character as to require more than 30 days to cure, in which event County will be in default only if it fails to initiate the cure within thirty days and thereafter diligently pursue the same to completion).

16.3. **Remedies.** Either party may pursue any remedies provided by law and in equity for the breach of this Lease, including termination of the Lease.

17. **Notices.** All notices to be given under this Lease must be in writing and be either served personally or sent by certified or registered mail, return receipt requested, to the parties as indicated below or to such other persons, or addressees as either party may designate in writing to the other party:

SNHU : Southern New Hampshire University
97 East Congress St.
Tucson, Arizona 85701

With a copy to:

Southern New Hampshire University
Attn: Office of Procurement & Strategic Sourcing
2500 North River Road, Manchester, NH 03106
Email: sourcing@snhu.edu, Telephone: 603-645-9622

COUNTY: Clerk of the Board of Supervisors
130 W. Congress St.
Tucson, Arizona 85701

With a copy to:

Director, Pima County Facilities Management
150 W. Congress Street, 3rd Floor
Tucson, Arizona 85701

18. **No Liens or Interference.** SNHU agrees not to incur, or if incurred to promptly remove, any obligations, judgments or other actions that would result in a lien or encumbrance on the Premises.
19. **Non-Disturbance.** County represents and warrants that there is currently no monetary encumbrance or lien on the Premises. SNHU will subordinate its interest in this Lease to any future encumbrance if Tenant receives a commercially reasonable non-disturbance and attornment agreement from the holder of such encumbrance.
20. **Hazardous Materials Prohibited; Clean Air Act.** SNHU will not cause or permit any hazardous or toxic materials or substances to be brought upon, kept, or used in or about the Premises by SNHU, its agents, employees, contractors or invitees, without the prior written consent of County, other than such hazardous or toxic materials or substances that are necessary to SNHU's business and will be used, kept and stored in a manner that complies with all laws regulating any such materials or substances. SNHU's operations on the Premises will

comply with all applicable provisions of environmental laws and regulations, including the Clean Air Act, 42 U.S.C. 7401 et seq. and Arizona Revised Statutes, Title 49, Chapter 3. SNHU will remediate and clean up, at its sole cost and expense, any contamination of the Premises or neighboring property caused by SNHU.

21. **Destruction of Premises.** If at any time during the Term of the Lease, the Premises becomes partially or totally destroyed by reason of any damage by fire, flood, hurricane, windstorm or other casualty or act of God and the County cannot or does not fully repair the Premises within ninety (90) days through no fault of SNHU then SNHU will be relieved of any further obligation, duty or liability under this Lease. If the Premises can be and are repaired fully in ninety (90) days, then the Lease will continue in full force and effect while the repairs are being made, and rent will be abated by the percentage of the total space that is unavailable or not reasonably useful to SNHU.
22. **Condemnation.**
 - 22.1. **Complete Taking.** If the whole of the Premises is taken or condemned for any public or quasi-public use or purpose, by right of eminent domain or by purchase in lieu thereof, or if a substantial portion of the Premises is taken or condemned so that the portion or portions remaining is or are insufficient or unsuitable, in the mutual reasonable judgment of County and SNHU, for the continued operation of the business contemplated by this Lease, so as to effectively render the Premises untenable, then this Lease will cease and terminate as of the date on which SNHU is required to vacate the Premises as a result of the condemning authority taking possession and all Rent will be paid by SNHU to County up to that date or refunded by County to SNHU if Rent has previously been paid by SNHU beyond that date.
 - 22.2. **Partial Taking.** If a portion of the Premises is taken, and the portion or portions remaining can, in the mutual reasonable judgment of County and SNHU, be adapted and used for the conduct of SNHU's business operation, then the County will promptly restore the remaining portion or portions thereof to a condition comparable to their condition at the time of such taking or condemnation, less the portion or portions lost by the taking, and this Lease will continue in full force and effect except that the Rent payable hereunder will, if necessary, be equitably adjusted to take into account the portion or portions of the Premises lost by the taking.
23. **Quiet Enjoyment.** County warrants that County is seized of the Premises and has the full right to make this Lease. County further covenants that SNHU will have quiet and peaceful possession of the Premises during the entire Term as against lawful acts of third parties and as against the acts of all parties claiming title to, or a right to possess, the Premises.
24. **Expenses Advanced by SNHU.** If County fails within thirty days (or such lesser time as is appropriate if there is a threat to health or safety) after requested by SNHU to make necessary repairs to the Premises or perform another act required of County under this Lease, SNHU may

cause such repairs to be made or such acts to be performed at the expense of County. SNHU may apply such claims against any subsequent installment of Rent.

25. **Change in Ownership.** If ownership of the Premises or the name or address of the party entitled to Rent changes, SNHU may, until receipt of written notice of such change, continue to pay Rent to the party to whom and in the manner in which the last preceding installment of Rent was paid. SNHU will not be subject to double liability for any Rent so paid. Any transfer of title to the Premises will be subject to this Lease.
26. **Holding Over.** If SNHU for any reason remains in possession after the expiration of the Term, or after the date specified in any notice of termination given by either party, such possession will be as a month to month tenant, subject to all conditions of this Lease other than the Term. The rent for the first 6 months will be 125% of the rent being paid by SNHU's prior to the expiration or termination, and for the next 6 months will be 150% of that amount.
27. **Interpretation of Lease.** The parties acknowledge that each has had the opportunity to review this Lease with counsel of their choice. This Lease will not be construed more strongly in favor or against either of the parties but will be interpreted fairly and equitably to effectuate the intent of the parties. All provisions contained in this Lease will bind and inure to the benefit of the parties and their successors and assigns.
28. **Entire Agreement.** This Lease contains the entire agreement between the parties and all previous Leases, amendments, negotiations, or understandings are superseded by and merged in this Lease. This Lease may be modified by the parties only by writing executed with the same formalities as this Lease.
29. **Professional Fees.** County and SNHU each represents and warrants to the other it has not dealt with any broker in connection with this Lease transaction other than Newmark Knight Frank working in conjunction with Mark Irvin Commercial Real Estate (collectively "SNHU Representatives"), representing SNHU. Any and all associated commissions, fees or costs will be paid by SNHU pursuant to a separate agreement between SNHU and SNHU Representatives.
30. **Non-Discrimination.** The parties will comply with all applicable state and federal statutes and regulations governing equal employment opportunity, non-discrimination, and immigration.
31. **Non-appropriation.** The parties recognize that the performance by County may be dependent upon the appropriation of funds by the Board of Supervisors of the County, or the availability of funding from other sources. Should the Board of Supervisors fail to appropriate the necessary funds, or if funding becomes otherwise not legally available to the County to fund its responsibilities under this Lease, the County may terminate this Lease without further duty or obligation. County agrees to notify SNHU as soon as reasonably possible after the unavailability of said funds comes to the Board's attention.

32. **Conflict of Interest.** This Lease is subject to cancellation pursuant to the provisions of Arizona Revised Statute § 38-511 regarding Conflict of Interest.
33. **Law to Govern.** This Lease is made under and will be interpreted according to Arizona law. Any action relating to this Lease will be brought in a court of the State of Arizona in Pima County.
34. **Sustainability Plan.** In accordance with the County's Sustainability Plan, SNHU will use all reasonable efforts to use recycled products or re-use and recycle materials used in the Premises.
35. **Applicable Law.** The parties will comply with all applicable federal, state and local laws, rules, regulations, standards, Executive Orders, and with any applicable Pima County Board of Supervisors' policies, including Policy Number C. 3.18 entitled "Tobacco-Free Environment," a copy of which is attached as **Exhibit C**.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS]

LANDLORD:

PIMA COUNTY, a political subdivision of
The State of Arizona

TENANT:

SOUTHERN NEW HAMPSHIRE
UNIVERSITY, a New Hampshire nonprofit
corporation

By: _____
Richard Elias
Chairman, Board of Supervisors

By: _____
Kenneth Lee
Chief Financial Officer

Date: _____

Date: 8/7/2019

ATTEST:

By: _____
Julie Castaneda, Clerk of the Board of Supervisors

Date: _____

APPROVED AS TO CONTENT:

By: _____
Lisa Josker, Director, Facilities Management Department

Date: 8/12/19

APPROVED AS TO FORM:

By: _____
Regina Nassen, Deputy Pima County Attorney

Date: 8-7-2019

Exhibits:

- Exhibit A: Site
- Exhibit B: Existing Furniture Layout
- Exhibit C: Tobacco Free Policy C 3.1.18

LANDLORD:

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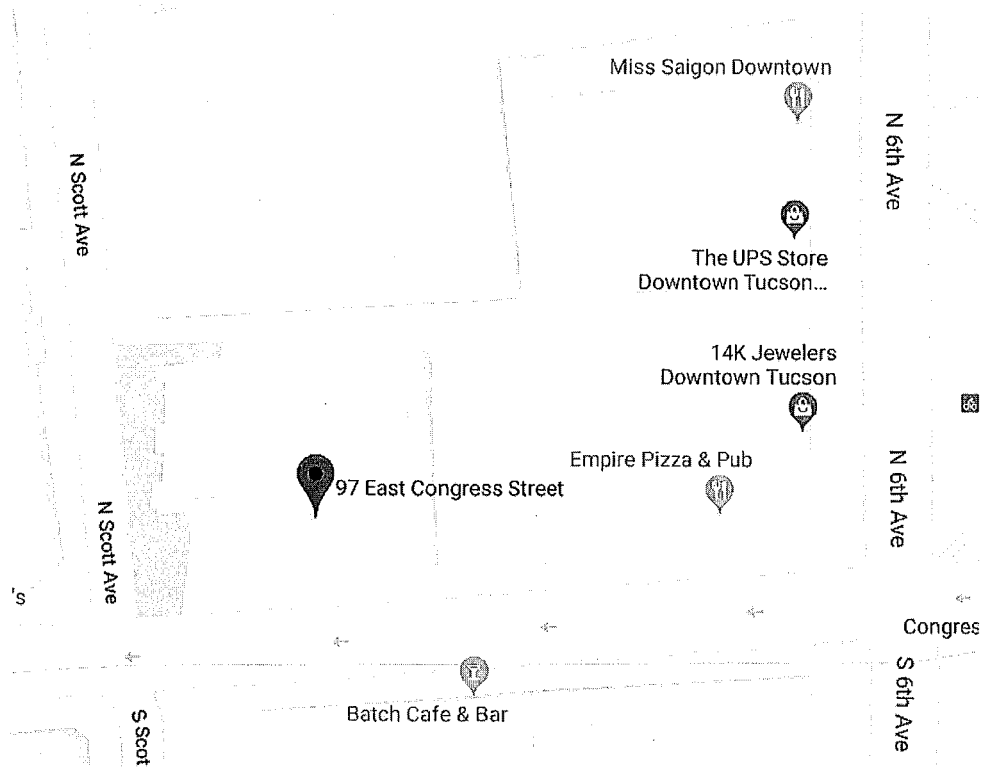
Exhibits:

Exhibit A: Site
Exhibit B: Existing Furniture Layout
Exhibit C: Tobacco Free Policy C 3.1.18

EXHIBIT A – Site

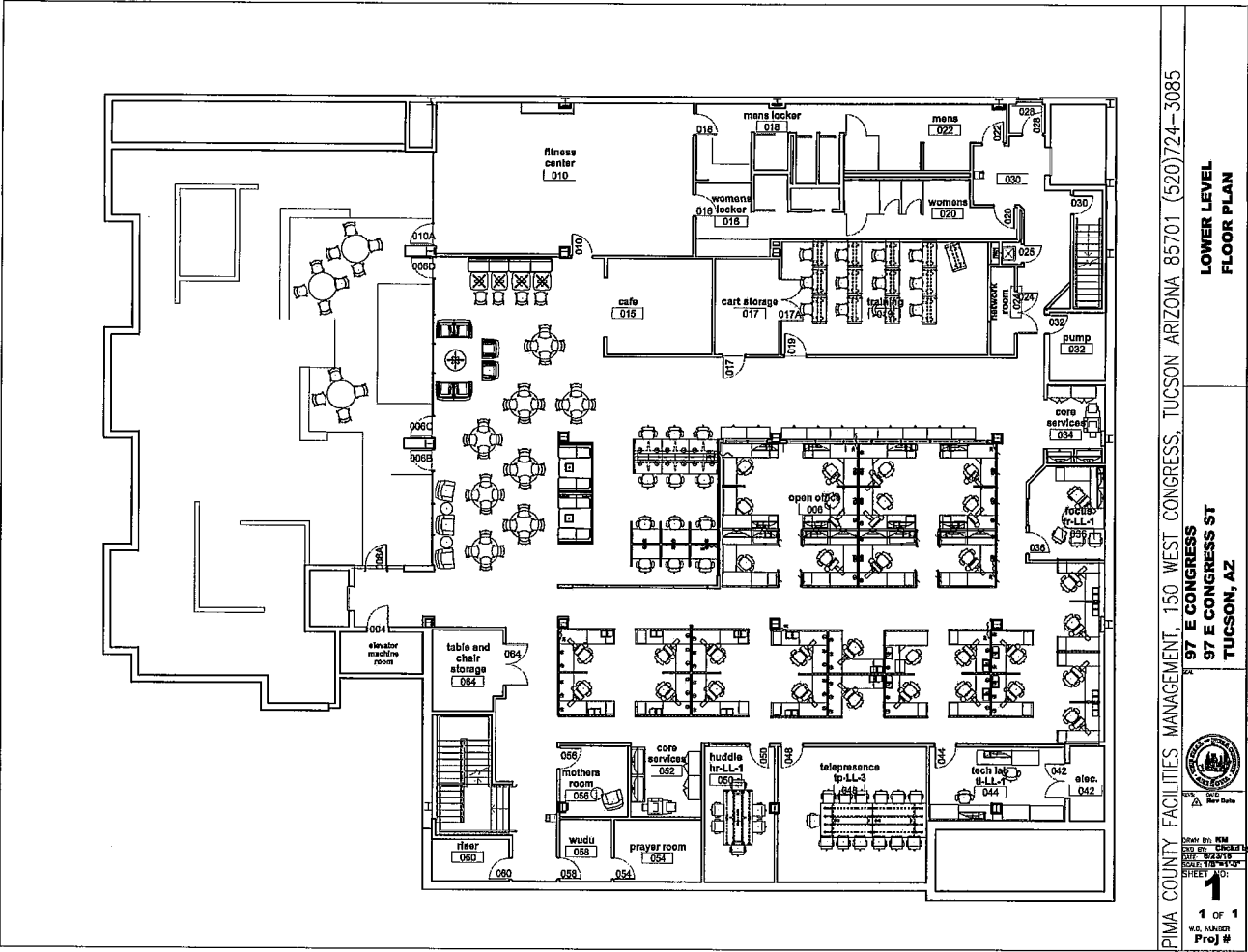


Site - Aerial



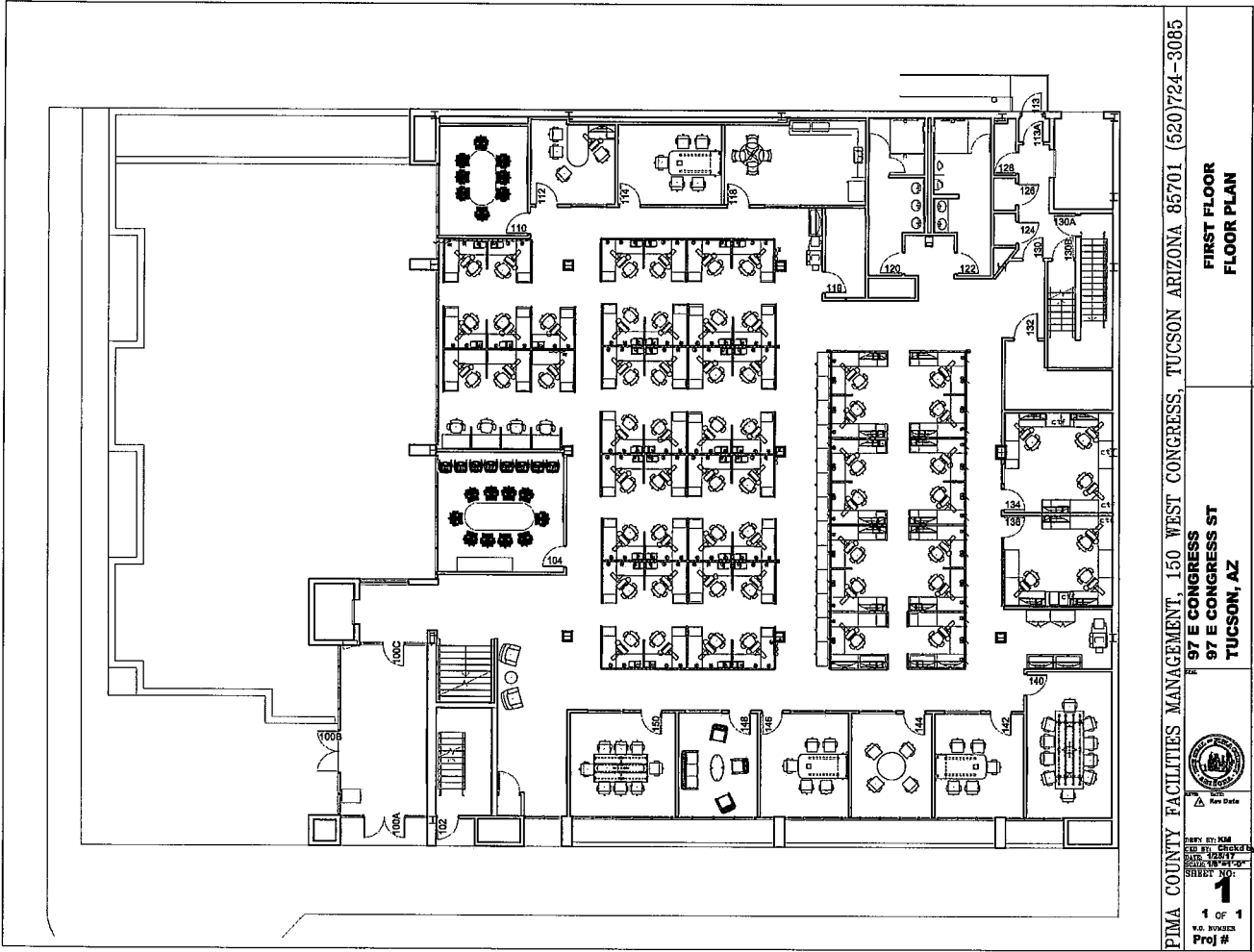
Site – Map

EXHIBIT B



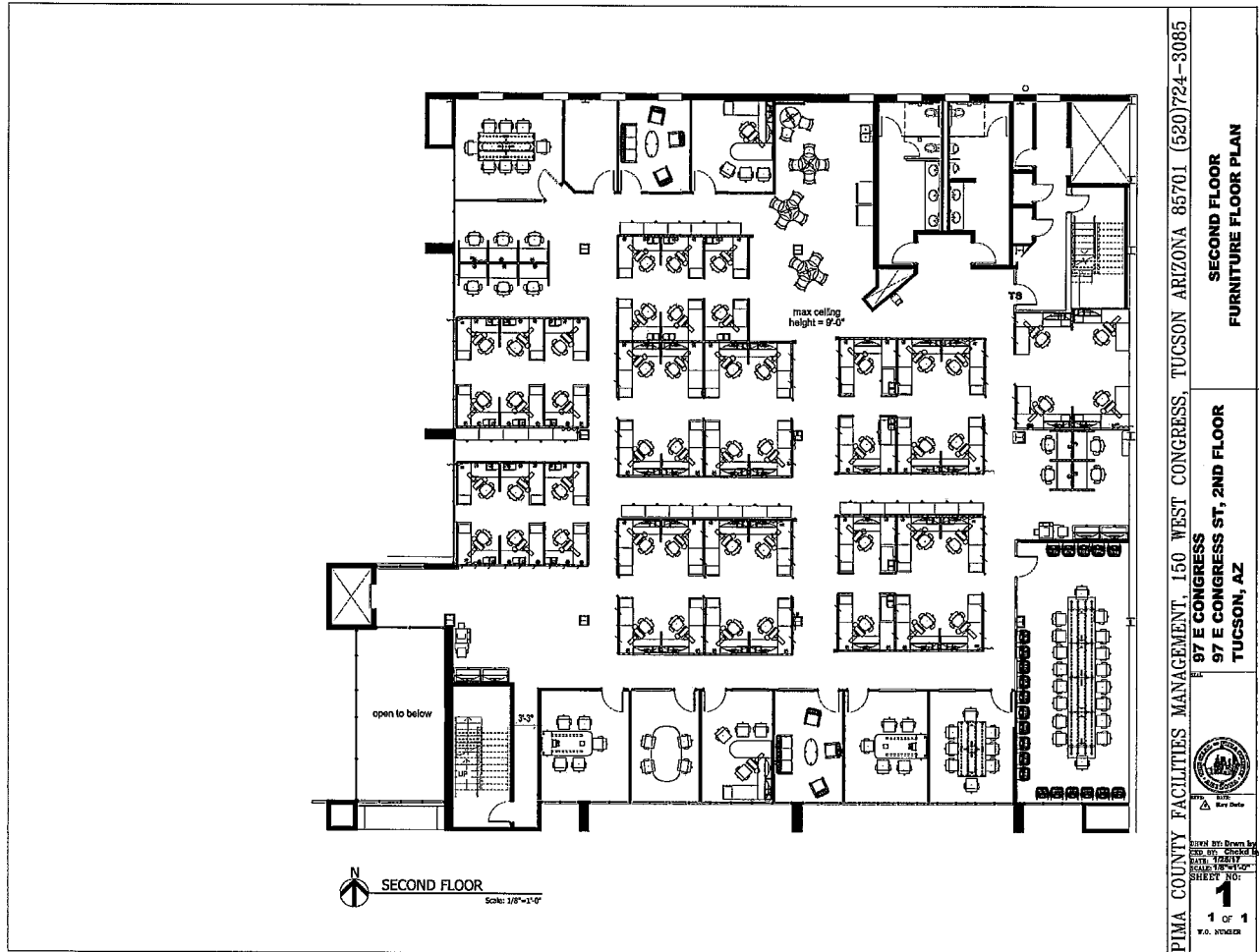
Existing Furniture Layout - Lower Level

EXHIBIT B



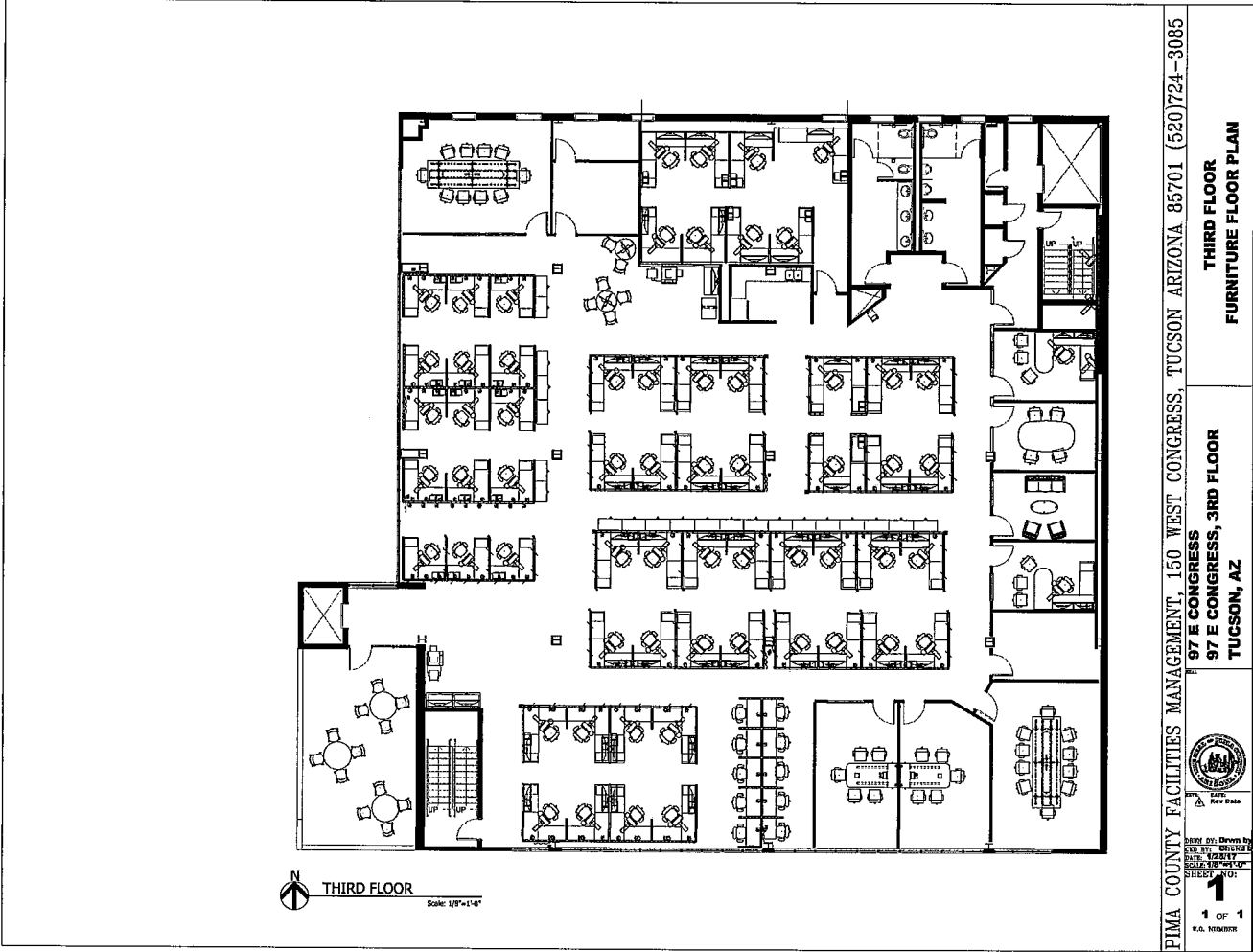
Existing Furniture Layout – First Floor

EXHIBIT B



Existing Furniture Layout – Second Floor

EXHIBIT B



Existing Furniture Layout – Third Floor

EXHIBIT C
TOBACCO FREE POLICY C 3.1.18

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PIMA COUNTY, ARIZONA
BOARD OF SUPERVISORS POLICY
Subject: Tobacco-Free Environment
Policy Number C 3.18

Purpose:

Smoking and the use of tobacco related products are a major cause of preventable disease and death. As a leading employer and health proponent Pima County is committed to the promotion of health, wellness, and the prevention / treatment of diseases. Pima County also serves as a model for the public influencing attitudes about smoking and the dangers of tobacco products. The purpose of this tobacco-free policy is to create tobacco-free environments for all Pima County facilities, public buildings and adjacent properties, to provide Pima County employees and the public with guidelines for managing and supporting this policy, and to encourage a healthy lifestyle for all personnel and visitors.

Background:

As a major entity involved in the promotion of public health and safety within Pima County, the Board of Supervisors promotes and encourages the establishment of a tobacco-free zone on County facilities, public buildings and adjacent properties. The Board of Supervisors has previously established wellness as a priority for all County employees, by the adoption of the long-range Sustainability Program and employee incentives in the way of premium discounts for health insurance benefits. The establishment of a tobacco-free policy is the natural continuance of those efforts.

Policy:

It is the policy of the Board of Supervisors that to provide a safe and healthy environment for all employees, and the general public.

The Board of Supervisors prohibits the use of tobacco products at all times on County facilities, public buildings and adjacent properties, and in County vehicles. This prohibition applies to all employees, and to all visitors and other persons at any County sponsored activity or event conducted on County facilities, in public buildings or on adjacent properties.

Definitions:

Tobacco Products include cigarettes, cigars, pipes, smokeless tobacco, water pipes, hookah, e-cigarettes, chewing tobacco, snuff and other products containing tobacco.

Exhibit C
TOBACCO FREE POLICY C 3.1.18

Page 2 of 2

County Facilities, Public Buildings and Adjacent Properties including County owned or leased properties and a facility occupied or used by any County personnel, visitor, or vendor, and includes but is not limited to buildings, courtyards, walkways, breeze-ways, parking lots, parking structures, County vehicles (owned or leased), loading docks or construction sites.

Compliance:

County personnel are responsible for compliance with the policy.

Visitors and vendors observed to violate this policy shall be respectfully informed of the Tobacco-Free Environment Policy and asked to comply. If a visitor or vendor neglects to comply, that neglect to comply may be used as grounds for prohibiting access to premises or facilities by said visitor or vendor.

If any individual violating the policy appears agitated or otherwise confrontational regarding compliance, then County personnel shall immediately inform the staff responsible for the facility or security personnel if available and shall engage in no further intervention.

All vendors doing business with Pima County shall be notified of the Tobacco-Free policy and shall be expected to comply with the policy. Organizers and supervisors of public events, conferences, meetings and work activities on County facilities, work sites, public buildings and adjacent properties shall be responsible to communicating the requirements of the Tobacco-Free Policy to such events or conferences for attendees.

All new employees of Pima County will be informed on and educated about the Tobacco-Free Policy and the requirement that employees comply with the policy. Additionally, new employees shall be made aware of the availability of tobacco cessation programs sponsored or funded by Pima County.

References:

Pima County Ordinance, Chapter 2.12
Pima County Code, Section 8.50

Adopted Date: November 13, 2012
Effective Date: January 1, 2013

Website:

http://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/Clerk%20of%20the%20Board/Policies/C3-18.pdf