



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: October 1, 2019

* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Arizona Aerospace Foundation, Inc. dba Pima Air and Space Museum

***Project Title/Description:**

Operating Agreement for Pima Air and Space Museum

***Purpose:**

Amended and Restated Agreement will replace the existing agreement. Authorizing Arizona Aerospace Foundation, Inc to operate, manage, repair, maintain, promote, improve, and develop the Facility.

***Procurement Method:**

Operating Agreement for Pima Air and Space Museum- Non Procurement contract and not subject to procurement rules.

***Program Goals/Predicted Outcomes:**

To manage and maintain the museum for Pima County resident and tourist.

***Public Benefit:**

The residents of Pima County will continue to receive educational benefit of the history of aviation and space flight.

***Metrics Available to Measure Performance:**

Operator will submit annual unaudited financial statements and semi-annual audited financial statements to the County Administrator or designee.

***Retroactive:**

n/a

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To: PCB- 9-26-19

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Contract / Award Information

Document Type: CT Department Code: ED Contract Number (i.e., 15-123): 20-114
Effective Date: 10/01/2019 Termination Date: 09/30/2044 Prior Contract Number (Synergen/CMS): _____
☐ Expense Amount: \$ _____ ☐ Revenue Amount: \$ _____

***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: Florina Lopez

Department: Attractions & Tourism

Telephone: 520-724-7350

Department Director Signature/Date: Diane J. [Signature] 9/25/19

Deputy County Administrator Signature/Date: [Signature] 9/26/2019

County Administrator Signature/Date: C. [Signature] 9/26/19
(Required for Board Agenda/Addendum Items)

PIMA COUNTY DEPARTMENT OF ECONOMIC DEVELOPMENT AND TOURISM

PROJECT: Operating Agreement for Pima Air and Space Museum

OPERATOR: Arizona Aerospace Foundation, Inc.

REVENUE CONTRACT NO.: CT- ED - 20- 1 1 4 (04-71-T- 121545-0578)

**AMENDED AND RESTATED AGREEMENT FOR THE
OPERATION OF THE PIMA AIR AND SPACE MUSEUM**

This Amended and Restated Agreement for the Operation of the Pima Air and Space Museum ("**Agreement**") is made and entered into by and between Pima County, a political subdivision of the State of Arizona ("**County**"), and Arizona Aerospace Foundation, Inc., an Arizona nonprofit corporation that is also tax-exempt under 26 U.S.C. § 501(c)(3) ("**Operator**"), effective as of October 1, 2019 (the "Effective Date").

1. Background and Purpose.

- 1.1. County is the owner of the improved real property described and depicted in **Exhibit A** (the "**Facility**"). Operator is a non-profit corporation organized under the laws of the State of Arizona.
- 1.2. County is authorized by A.R.S. § 11-933 to enter into agreements for the operation of county public parks, as defined in A.R.S. § 11-931.
- 1.3. County and Operator previously entered into that certain *Agreement for Operation of Pima Air Museum*, dated May 15, 1978 (the "**Original Agreement**").
- 1.4. Under the Original Agreement, as amended from time to time, Operator has developed, operated, improved, and maintained the Facility as a public park area for the rest, relaxation, educational benefit, and recreation of the inhabitants, tourists, and visitors of Pima County since May 15, 1978. As previously extended, the term of the Original Agreement will expire June 1, 2021. The Parties have an option to extend the term for an additional twenty-five (25) years, to June 3, 2046.
- 1.5. In order to generate more cost-effective long-term electricity for the benefit of the Facility, County contracted with SOLON Development, LLC, an Arizona corporation ("**SOLON**") in 2016 to design, install, operate, and maintain four (4) solar panel covered parking areas ("**Solar Carports**") within the Facility's parking areas that the County had recently repaved ("**Parking Areas**"), which areas are depicted in **Exhibit A-1**. The Solar Carports are located where shown on **Exhibit B** to this Agreement. Separate electrical meters have been installed to measure electricity delivered to the Facility by SOLON and by Tucson Electrical Power Company ("**TEP**"). Under the *Solar Service and Solar License Agreement* between County and SOLON, which was fully signed on June 7, 2016, SOLON has agreed to service, repair and maintain the Solar Carports.

- 1.6. The Parties now wish to enter into a new operating agreement for the Facility.
2. **Original Agreement.** As of the Effective Date, this Agreement will supersede and replace the Original Agreement in its entirety.
 3. **Term.** The Term of this Operating Agreement will commence on the Effective Date and will continue for twenty five (25) years (the "**Initial Term**"), subject to earlier termination as provided in Section 18 of this Agreement. The term of this Agreement may be extended by Operator for an additional twenty five (25) years ("**Extension Term**") with 180-days' advance written notice to County of its election to so extend the term. The Initial Term and any Extension Term are referred to herein as the "Term."
 4. **Authorization to Operate Facility.** Pursuant to A.R.S. § 11-932, and in consideration of the mutual promises and covenants set forth in this Agreement, County grants Operator the exclusive right to operate the Facility as a public park known as the Pima Air and Space Museum. Operator agrees that it will—at its own expense and for the benefit and recreation of the County's inhabitants, tourists, and visitors—operate, manage, repair and maintain, promote, improve, and develop the Facility under and subject to the terms of Agreement.
 5. **Operator's Performance Standards.** Operator must comply with the following performance standards during the Term of this Agreement:
 - 5.1. **Permitted Activities.** Operator will operate the Facility as a public museum that focuses on the history of aviation and space flight. Operator may include within the Facility gallery space, curatorial space, a gift shop, parking, and a restaurant for museum guests. These uses (the "**Permitted Activities**") are the only uses permitted within the Facility. Operator will conduct the Permitted Activities continuously during the Term of this Agreement.
 - 5.2. **Collections, Furnishings, and Equipment.** Operator will provide all furnishings, collections, displays, and equipment necessary to establish, develop, promote, operate, maintain, and improve the museum and conduct the Permitted Activities at the Facility.
 - 5.3. **Hours of Operation.** Operator recognizes the public-service nature of this Agreement and agrees to operate the Facility and keep the Facility open to provide public recreation and full service each day. Hours of operation, holiday or special closings will be subject to County approval based on reasonable public demand and business activity. Operator must ensure that the Facility is adequately staffed when open to the public.
 - 5.4. **Admissions and Fees.** The Facility will be open for the use of the public without discrimination as to race, sex (including sexual orientation and gender identity and expression), age, national origin, religion, political affiliation, or physical disability.
 - 5.4.1. Any admission fees that Operator charges to the general public will be in an amount that has received prior written approval by County, and such fees may only be increased or decreased with such prior written approval.
 - 5.4.2. Operator has been committed to the support of youth educational programs in Pima County since its inception and has permitted free access to schools/classes upon request. Operator will admit at-risk youth free upon request and in accordance with Operator's eligibility standards, and will maintain a family-friendly environment. Annually Operator will report to County the number of free, at-risk youth admissions.

Operator will continue to develop educational programs for youth that promotes air and space educational themes both past and present.

- 5.5. **Concessions.** Operator may operate concessions for the sale of beverages, snacks, food, publications, souvenirs, and similar items. Any contracts or concession agreements must be approved in writing by County, which approval may be withheld by County for any reason.

5.5.1. If food is sold to or consumed by members of the public, all applicable food permits must be obtained, and Operator and its contractors and concessionaires must comply with all Pima County health regulations.

5.5.2. Alcoholic beverages may be sold and consumed at the Facility if Operator obtains the necessary liquor license as required by the State of Arizona. Operator must obtain liquor liability insurance in the amount of \$5,000,000 naming County as additional insured.

5.6. **Special Events.**

5.6.1. *Definition.* For purposes of this Agreement, a "Special Event" is an event that is beyond the normal scope of the operation of the Facility, including any event, whether public or private, that (a) is expected to attract more than eight hundred (800) people; (b) involves a cash bar or other sales of alcohol; or (c) may increase risk of injuries to persons at the Facility. Special Events do not include routine meetings and functions.

5.6.2. *Notice; Traffic & Safety Plans.* Should Operator desire to conduct a Special Event, with a set arrival time that exceeds 2,500 people Operator must give County a thirty (30) day advance written request, with a description of the Special Event, together with a traffic control plan for the roads leading to and from the Facility, and a safety and security plan for the Special Event. County may impose reasonable traffic, safety and noise restrictions on the Special Event to promote the health and safety of the participants and of the general public and County may designate approved parking areas.

- 5.7. **Use of Revenues and Operator's Non-Profit Status.** Throughout the term of this Agreement, Operator must maintain its status as a non-profit tax-exempt entity and will operate the Facility accordingly. Operator will endeavor to limit expenditures, including salaries, so as not to impair its ability to fulfill the public purpose of this Agreement. All revenues whatsoever, including but not limited to those collected as donations, admission fees, from concessions and special events, or from other Permitted Activities, must only be used for the operation, maintenance, development, promotion, and improvement of the Facility and Operator's public programs at the Facility.

- 5.8. **Cooperation with County in Economic Development.** Operator will fully cooperate with County with respect to economic development activities related to tourism, including, but not limited to, coordination of tourism promotion with the regional tourism agency, currently Metropolitan Tucson Convention and Visitors Bureau, dba Visit Tucson. Operator will also participate in the planned regional visitor's center that will be operated by the County within the Pima County Historic Courthouse, located at 115 N. Church Ave., by providing promotional materials, exhibit samples, and items for sale in the gift shop. Operator will

acknowledge in any promotional materials and signage that the Facility and the Titan Missile Museum are Pima County facilities and attractions.

5.9. Accounting Records; Audits; Annual Unaudited Financial Reports, Budget.

- 5.9.1. *Accounting Records.* In connection with the operation of the Facility, Operator will keep and maintain accounting records consistent with generally accepted accounting principles (GAAP). Such records shall be open for inspection and audit by duly authorized representatives of County at all reasonable times.
- 5.9.2. *Annual Unaudited Financial Reports.* In addition to any required audited statements, Operator must give the County Administrator or his designee a year-end balance sheet and a year-end statement of income and expenses prepared in accordance with generally accepted accounting principles. The financial statements must be delivered by June 30 each year and must show all revenues from operation of the Facility and all expenses incurred in connection with the operation of the Facility for the previous fiscal year. Operator will cause any other organization that utilizes the Facility on an annual basis to give the County an annual financial report within one hundred twenty (120) days after the end of the user's fiscal
- 5.9.3. *Audited Financial Statements.* Every two years Operator will engage a qualified independent accounting firm to perform an audit of Operator's financial statements covering the two most recent fiscal years (November 1 to October 31) of operations. The statements must include the financial activities of the Pima Air and Space Museum. Unless otherwise agreed to by the Parties, Operator will provide the County Administrator or his designee with the financial statements and the auditor's opinion within 30 days after Operator's Annual General Meeting, but no later than March 31st of the year immediately following the conclusion of the most recent fiscal year covered by the audit.
- 5.9.4. *Additional Audits.* At any time upon written notice to Operator, County may, for cause, require Operator to provide a program-specific or financial audit ("For-Cause Audit"). County's written notice will specify the period to be covered by the audit, the type of audit required, and the time for completion and submission of the audit. All audits provided under this section must be performed by a qualified independent accounting firm. Such audits must include any response Operator wishes to make concerning any audit findings. A For-Cause Audit is one based upon a reasonably specific concern, complaint, or allegation discovered by, or made to, County.
- 5.10. **Compliance with Laws.** Operator may not use the Facility, or permit anything to be done in, on, or about the Facility, that in any way conflicts with any federal, state, or local law, statute, ordinance or governmental rule or regulation.
- 5.11. **Volunteers.** All volunteers working at the Facility under the direction of Operator will execute a release of liability in a form reasonably acceptable to County prior to doing any work at the Facility. Operator will deliver a sample of the release to the County in the same manner as the giving of other notices under this Agreement.
- 5.12. **Utilities.** Except as specifically provided below, Operator will obtain, at its expense, all utility services for operation of the Facility, including but not limited to potable water supplied by City of Tucson.

5.12.1. **Electric Utility Bills.** County has established accounts with both TEP and SOLON for electric service at the Facility, and will timely pay the bills issued by those companies for electricity provided to the Facility. County will invoice Operator monthly for the amounts billed and paid on those accounts, and Operator will reimburse County within ten (10) business days after receipt of such invoices.

5.12.2. **Service Interruptions.** County has no liability to Operator if any utilities or services, whether or not furnished by County, are interrupted or terminated because for any cause beyond County's reasonable control, and no such failure, interruption or termination will relieve Operator of any of its obligations under this Agreement.

5.13. **Signs.** Operator may install any signs at the Facility that Operator deems appropriate, but all signs must comply with the City of Tucson Sign Code and must be approved in writing and in advance by County. County may review the type, size, color, location, content, and display qualities of proposed signs to determine if they are consistent with the Permitted Activities conducted at the Facility. Operator will install, maintain, repair and replace all signs at Operator's expense and Operator will, if requested by County, remove all signs at Operator's expense when this Agreement expires or is terminated.

5.14. **Repairs and Maintenance.**

5.14.1. **Duty to Maintain.** Except as specifically set forth below, Operator will, at its expense, keep the interior and exterior of the buildings and improvements located at the Facility in good condition and repair. This includes maintaining, repairing, and when necessary replacing all appliances, furnishings, landscaping, irrigation systems, fencing, parking lots, parking lot lighting, doors, window casements, glazing, plumbing, pipes, electrical wiring, lighting fixtures and conduits, fire suppressant systems and related equipment, heating and air conditioning systems, foundations, walls (exterior and interior), sidewalks, corridors, roofs, pest control, and sewer, water, and exterior electrical lines. Operator will, upon expiration or sooner termination of this Agreement, surrender the Facility to County in good condition and have the site professionally cleaned.

5.14.2. **Damage by County.** If the Facility is damaged as a result of negligent or intentionally wrongful conduct of the County, its agents, employees, or contractors, County will repair the damage at its own expense.

5.14.3. **County Right to Cure.** If Operator fails to perform its maintenance and repair obligations, Operator will be in default under this Agreement, and the County, without notice, may, but will not be obligated to, perform Operator's obligations. Operator will, within 30 days of receiving an invoice from County, reimburse County for the cost of the work, plus interest at a per-annum rate of twelve percent (12%) from the time the cost was incurred by County until paid. Any such default by Operator will not be considered cured until Operator has paid the County.

5.14.4. **Liens.** Operator will keep the Facility free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of Operator.

5.14.5. **As-Is Condition.** Operator accepts the Facility and all improvements thereon in "AS IS" condition with no warranties of any sort being expressed or implied by County.

- 5.14.6. **SOLON Right of Entry.** Within five (5) business days after receipt of a written request from County, Operator will allow SOLON, or its successor, and their contractor, to enter the Parking Area for all lawful and reasonably necessary purposes related to the operation, maintenance and repair of the Solar Carports, which includes but is not necessarily limited to SOLON entries in order to perform its obligations under contracts it has with County.
- 5.15. **Waste Removal.** Operator will prepare and implement an integrated waste management plan to re-use, recycle, dispose of, and/or compost any waste materials generated or present at the Facility, and will submit the plan for County review at least annually. Operator may comply with the requirements of this paragraph through a contract with the City of Tucson or another qualified waste hauler for the provision of commercial refuse service to the Facility.
- 5.16. **Resource Protection.**
- 5.16.1. Operator will not conduct, or permit any other person to conduct, on the Facility, mining, quarrying, sand-hauling, fill hauling, or timbering of any kind.
 - 5.16.2. Operator will not permit the hunting or trapping of wild birds or animals on the Facility, nor the destruction or removal of plants, shrubs, trees, or grasses, except with prior written approval of County.
 - 5.16.3. Operator will not discharge waste, byproducts, or materials that might result in harm to wildlife or to human water supplies onto the Facility or into water channels.
 - 5.16.4. Operator will take all reasonable measures to protect the scenic aesthetic values of the area and prevent soil erosion and gulying that might be caused by construction or improper use of resources.
 - 5.16.5. Operator will secure the Facility and take all necessary steps and precautions to prevent vandalism and other damage to all air and space craft, exhibits, and other personal property stored at the Facility.
 - 5.16.6. Operator will take all reasonable measures to discourage disorderly conduct at the Facility, and will call appropriate law enforcement officers when necessary and assist and cooperate in subsequent prosecutions.
 - 5.16.7. Operator will take all appropriate actions to prevent fire damage to the Facility and any improvements, collections and natural resources at the Facility, including but not limited to complying with approved building and electrical wiring codes and with area closures and use restrictions imposed by any governing jurisdiction.
 - 5.16.8. In addition to the requirements of Section 7 below, Operator will comply with all present and future laws and regulations regulating the environment, hazardous or toxic waste, ambient air, groundwater, surface water, and land use.
- 5.17. **Third Party Contract.** Operator may not contract with a third party to conduct the Permitted Activities without County's prior written consent, which will be at County's sole discretion. County's consent to a third party contract will not relieve Operator of any of its obligations, responsibilities, or liabilities under this Agreement.

- 5.18. **Expenses of Operator.** Operator will conduct all of its operations at the Facility at its own expense and without financial or in-kind contributions from County. Operator will not otherwise suggest, state, or imply that County will participate, guarantee, or assist in any financial or other obligation undertaken by Operator with respect to its operations at the Facility.
6. **Alterations and Improvements to Facility.** Either Party may, with the consent of the other, which consent may not be unreasonably withheld, conditioned or delayed, make physical improvements, alterations, additions, or changes to the Facility (collectively, "**Alterations**"), as provided below. Operator may, however, make nonstructural Alterations costing less than \$150,000 (the "**Maximum Expenditure Amount**"), without obtaining County's consent.
- 6.1. **County's Consent.** If the estimated cost of an Operator-proposed Alteration exceeds the Maximum Expenditure Amount, Operator must obtain the consent of the County Administrator or his designee for Alterations costing more than \$150,000, and the consent of the Board of Supervisors for Alterations costing more than \$200,000.
- 6.2. **Procedure for Obtaining Approval.** A Party that wishes to make an Alteration (the "**Contracting Party**") must provide the other Party (the "**Reviewing Party**") with written notice of the proposed Alterations (an "**Alterations Notice**"). The Alterations Notice must include plans and specifications for the Alterations ("**Alteration Plans**") developed by an Arizona registered architect or engineer. The Reviewing Party will have forty-five (45) days after receipt of an Alterations Notice to approve or reject the proposed Alterations. Failure to respond to an Alterations Request within forty-five (45) days will be deemed approval.
- 6.3. **Reasons for Disapproval.** The Reviewing Party will not unreasonably withhold consent to proposed Alterations. Without limitation, however, it is reasonable for the Reviewing Party to withhold consent for Alterations that would:
- 6.3.1. adversely affect the integrity of any structural, mechanical, or electrical system within any portion of the Facility;
 - 6.3.2. result in the Reviewing Party being required to perform any work that could otherwise be avoided or deferred;
 - 6.3.3. result in an increase in the premiums for any hazard or liability insurance carried by the Reviewing Party or result in an increased risk of liability or pose a safety hazard;
 - 6.3.4. result in an increase in the demand for utilities or services (including wastewater treatment) that are provided by the Reviewing Party to the Facility;
 - 6.3.5. adversely impact the listing of the Facility or deviate from the standards required to maintain the listing of the Facility on the National Register of Historic Places.
- 6.4. **No Liability for Approval of Alterations.** The Reviewing Party's review of the Alteration Plans will be solely for that Party's purposes and will not imply that that Party has reviewed the Alteration Plans for quality, design integrity, legal compliance, or other substantive matters. Contracting Party will be responsible for any omissions or errors in the Alteration Plans. The Reviewing Party's review will be solely to determine that the proposed Alterations are consistent with the public purposes of this Agreement.

6.5. **Construction of Alterations.** The Contracting Party will cause an approved Alteration to be constructed in a good and workmanlike manner, be completed promptly, and use new materials.

6.5.1. *Compliance with Law.* All Alterations, whether permanent or temporary, must comply with all applicable federal, state and local statutes, codes, ordinances, rules, and regulations. The Contracting Party will obtain all necessary permits from regulatory agencies, including, but not limited to the Pima County Development Services Department, the Pima County Flood Control District, and the State Fire Marshall.

6.5.2. *Contractor Indemnification.* Every construction contract must include the contractor's agreement to indemnify and defend both Parties from and against any and all liability, damages, and expenses of any kind or nature suffered or incurred by the Party as a result, in whole or in part, of any negligent or willfully wrongful acts or omissions of the contractor.

6.5.3. *Contractor Insurance.* Every construction contract must require said contractors to obtain insurance coverage of a type and amount acceptable to the Parties and to name both Parties as additional insureds with respect to liability arising out of the performance of said contracts. Within thirty (30) days after completion of any buildings or improvements, the Contracting Party Operator must deliver to County a complete and reproducible set of as-built plans.

6.5.4. *Interference with Project.* Operator will not unreasonably interfere with the County's construction of an approved Alteration, and the County will not, in the course of construction, unreasonably interfere with Operator's operation of the Facility.

6.6. **Liens.** Operator must timely pay all Operator's contractors, subcontractors, mechanics, laborers, or materialmen providing materials or services with respect to the Facility, and will indemnify and defend County against all legal costs and charges resulting from any liens filed against the Facility by any person or entity providing materials or services to the Facility.

6.7. **Property of County.** Once installed, Alterations are part of the Facility, owned by the County and maintained and repaired by Operator as provided in this Operating Agreement.

7. Environmental.

7.1. **Hazardous Material.** For the purposes of this section, "Hazardous Material" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local governmental authority, the State of Arizona, or the United States Government and includes, without limitation, any material or substance that is (i) defined as a "hazardous waste" under NRS 459.400 *et seq.*, (ii) petroleum, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.* (42 U.S.C. 6903), (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* (42 U.S.C. 9601) or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. 6991 *et seq.*

- 7.2. **Hazardous Materials Prohibited; Clean Air Act.** Operator may not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Facility by Operator or Operator's agents, employees, contractors, or invitees without the prior written consent of County, other than such Hazardous Materials that are necessary or useful to Operator's business and will be used, kept, and stored in a manner that complies with all laws regulating those Hazardous Materials. Operator will comply with applicable provisions of the Clean Air Act, 42 U.S.C. 7401 *et seq.* and Arizona Revised Statutes, Title 49, Chapter 3.
- 7.3. **Environmental Indemnity.** In the event an Environmental Act occurs, Operator will indemnify, protect, defend, and hold County harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities, or losses (including, without limitation, diminution in value of the Facility or any part thereof, damages for the loss or restriction on use of usable space or of any amenity of the Facility or any part thereof, damages arising from any adverse impact on marketing of space with respect to the Facility or any part thereof, and sums paid in settlement of claims, attorney's fees, consultant fees, and expert fees) that arose or arises during or after the term of this Lease as a result of such contamination. This obligation of Operator to indemnify, protect, defend, and hold County harmless includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, restoration, or other response work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material presence, as a result of any action or inaction on the part of Operator or Operator's agents, employees, contractors, or invitees, on the Facility or the soil or groundwater on, under or adjacent to the Facility, or elsewhere in connection with the transportation by Operator of Hazardous Material to or from the Facility.
- 7.4. **Environmental Act.** For purposes of this Section 8, "Environmental Act" means an occasion in which:
- 7.4.1. Operator breaches the obligations stated in Section 7.2;
 - 7.4.2. the presence (whether consented to by County or otherwise) of Hazardous Material on the Facility or on or in the soil or groundwater under or adjacent to the Facility caused or permitted by Operator or Operator's agents, employees, contractors, or invitees results in contamination of the Facility or such soil or groundwater;
 - 7.4.3. contamination of the Facility or such soil or groundwater by Hazardous Material otherwise occurs for which Operator is legally liable to County for damage resulting therefrom; or
 - 7.4.4. if contamination occurs elsewhere in connection with the transportation by Operator of Hazardous Material to or from the Facility.
- 7.5. **Clean-Up.** Without limiting the foregoing, if the presence of any Hazardous Material within the Facility or the soil or groundwater under or adjacent to the Facility caused or permitted by Operator or Operator's agents, employees, contractors, or invitees results in any suspected contamination of the Facility or the soil or groundwater under or adjacent to the Facility, Operator will promptly notify County in writing and take all actions, at Operator's expense, as are necessary to return the Facility or such soil or groundwater to the condition existing prior to the introduction of any such Hazardous Material to the Facility or to such soil or groundwater; provided that Operator will first obtain County's approval of such actions, which approval County will not unreasonably withhold so long as such actions

would not potentially have any material adverse long-term or short-term effect on the Facility.

- 7.6. **Pre-existing Contamination.** Any Hazardous Materials contaminating the Facility prior to Operator's possession of the Facility in 1978 will not result in liability for Operator under this Section 7 except to the extent such contamination is aggravated by the action or inaction of Operator.
- 7.7. **Notices Regarding Environmental Conditions.** Operator will, within ten (10) business days following receipt, provide County with a copy of (i) any notice from any local, state, or federal governmental authority of any violation or administrative or judicial order or complaint having been filed or about to be filed against Operator or the Facility alleging any violation of any local, state, or federal environmental law or regulation or requiring Operator to take any action with respect to any release on or in the Facility or the soil or groundwater under or adjacent to the Facility of Hazardous Material, or (ii) any notices from a federal, state, or local governmental agency or private party alleging that Operator might be liable or responsible for cleanup, remedial, removal, restoration, or other response costs in connection with Hazardous Material on or in the Facility or the soil or ground water under or adjacent to the Facility or any damages caused by such release.
- 7.8. **Survival.** Operator's and County's obligations under this Section 7 will survive the expiration or earlier termination of this Agreement and vacation of the Facility.
8. **Entry by County.** County may enter the Facility at reasonable times to inspect the Facility and Operator's operations on the Facility.
9. **Insurance Requirements.** Operator will procure and maintain, throughout the term of this Agreement, insurance against claims for injury to persons or damage to property that may arise from or in connection with the actions of Operator, its agents, representatives, employees, volunteers or subcontractors, as provided below. Operator will require any subcontractors and subtenants to also obtain and maintain, during the term of their operations at the Facility, insurance that complies with the below requirements.
 - 9.1. **Minimum Scope and Limits of Insurance.** Operator must provide coverage with limits of liability not less than those stated below.
 - 9.1.1. *Commercial General Liability (CGL).* Policy shall be an occurrence form basis to include insurance coverage for bodily injury, property damage, personal injury, broad form contractual liability, products/completed operations and personal/advertising injury. Policy limits shall be \$2,000,000 Each Occurrence and \$4,000,000 general aggregate.
 - 9.1.2. *Liquor Liability Insurance.* Coverage is required whenever alcohol is being sold. The insurance coverage is to be provided by the vendor providing the liquor and the bartender(s) for the event. The Liability Policy may be under the vendor's CGL Policy or a specialized policy with policy limits of at least \$2 million per occurrence and \$4 million general aggregate. The policy shall be endorsed to include Pima County and the Operator as additional insureds.
 - 9.1.3. *Business Automobile Liability.* Operator must provide Auto Liability coverage for Bodily Injury and Property Damage in the amount of \$1 million combined single limit

for vehicles used in the performance of services under this Agreement and any renewals thereof.

9.1.4. *Worker's Compensation and Employers' Liability.* Workers' Compensation coverage: Statutory with Employers' Liability insurance to include: Each Accident \$500,000; Disease-Each Employee \$ 500,000 with a Disease-Policy Limit of \$1,000,000.

9.1.5. *Builders Risk.* Operator must obtain builder's risk insurance for any alteration projects it carries out on the Facility in an amount equal to the contract amount including all subsequent change orders. Pima County shall be included as a named insured to the policy. Coverage shall be written on an all risk replacement cost basis and shall include coverage for flood and earth movement as well as coverage for losses that may occur during equipment testing. Policy shall contain a waiver of subrogation endorsement in favor of Pima County and its districts and shall be maintained until the final payment is made and the project is fully released to the Operator. The Finance Director (as defined below) will determine the amount of insurance required.

9.2. **Additional Insurance Requirements.** The policies must include, or be endorsed to include, the following provisions:

9.2.1. *Claims Made Coverage.* If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Operator must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

9.2.2. *Additional Insured.* The General Liability and Business Automobile Liability Policies must each be endorsed to include Pima County and its districts as an additional insured. The liability policies must also name County's officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Operator.

9.2.3. *Subrogation.* The General Liability, Business Automobile Liability and Workers' Compensation Policies must each be endorsed to contain a waiver of subrogation endorsement in favor of Pima County, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of Operator.

9.2.4. *Primary Insurance.* Operator's policies must stipulate that they are primary and that any insurance carried by Pima County, its district, its agents, officials, or employees is excess and not contributory insurance. All insurance deductibles and retentions are the responsibility of the Operator and not Pima County. Coverage provided by Operator may not be limited to the liability assumed under the indemnification provisions of this Agreement.

9.3. **No Limitation on Indemnity.** These insurance requirements are minimum requirements and in no way limit the indemnity covenants contained in this Agreement. County in no way warrants that the minimum required limits are sufficient to protect Operator from liabilities that might arise out of activities at the Facility by Operator, its agents, representatives, employees or subcontractors, and Operator is free to purchase additional insurance.

- 9.4. **Notice of Cancellation.** Each required insurance policy must provide that it may not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice to Pima County.
- 9.5. **Acceptability of Insurers.** Insurance must be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. County in no way warrants that the above-required minimum insurer rating is sufficient to protect Operator from potential insurer insolvency.
- 9.6. **Verification of Coverage.** Operator will furnish County with certificates of insurance (ACORD form or equivalent approved by County) showing it has the required insurance policies. Each certificate must be signed by a person authorized by that insurer to bind coverage on its behalf. Failure to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, is a material breach of this Agreement. County reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.
- 9.7. **Modification of Insurance Requirements.** If at any time, in the sole opinion of the Director of the County Finance & Risk Management Department (the "**Finance Director**"), the below insurance requirements no longer provide sufficient protection for County, the Finance Director may modify the requirements, with at least 30 days prior notice to Operator.
- 9.8. **Sub-Contractors.** Operator must include all subcontractors as additional insureds under its policies, or must require the subcontractors to carry insurance satisfying all the requirements of this Section 9, including the obligation to provide certificates and endorsements.
10. **Indemnification.** To the fullest extent permitted by law, Operator will defend, indemnify and hold harmless County, its district, its officers, employees, and agents from and against all claims, liabilities, losses, damages, costs, and expenses, including but not limited to reasonable attorney's fees and litigation expenses arising out of or relating (directly or indirectly) to (i) events occurring on at the Facility during the term or any condition created in or about the Facility during the Term; (ii) any breach of any provision of this Agreement by Operator or any of Operator's subcontractors, employees, agents, or licensees. Operator is not obligated to indemnify County for the consequences of any negligent or intentionally wrongful act or omission of County, its agents, employees, or contractors.
11. **Operator not Agent of County.** Operator will exercise day-to-day control of activities on the Facility, and County will not control those activities. Operator's officers, employees, and agents are not employees of or otherwise under the control of County, nor are they entitled to receive any employment related compensation or fringe benefits under the Pima County Merit System.
12. **Notices.** Any notice required or permitted to be given under this Agreement must be in writing and must be mailed by first class, registered, certified or overnight mail, return receipt requested, postage prepaid, or transmitted by electronic mail, or hand delivered, to the parties at the addresses set forth below, or to such other address as any Party from time to time designates by written notice to the other Party.

If to County:

Director of Pima County Department of Attractions and Tourism
130 W. Congress, 5th Floor
Tucson, AZ 85701

With a copy to:

Chief Civil Deputy
Pima County Attorney's Office
32 N Stone Ave, Suite 2100
Tucson, AZ 85701

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

If to Operator:

Executive Director
Arizona Aerospace Foundation
6000 East Valencia Road
Tucson, AZ 85756

If mailed, all such notices, demands, requests, or other communications will be deemed received seventy-two hours after deposit in the U.S. mail. Notice served personally or by electronic mail or facsimile will be deemed received upon actual delivery. Notices will be deemed to be received even if the party rejects or refuses to accept the notice, or delivery fails because the party changed its address without appropriate notice to the other party.

15. **Conflict of Interest.** This Agreement is subject to cancellation under A.R.S. § 38-511 for conflicts of interest.
16. **Non-Discrimination.** During the performance of this Agreement, Operator will not discriminate against any employee, client, or any other individual in any way because of that person's age, race, color, religion, sex, disability or national origin. Operator shall comply with the provisions of Arizona Executive Order 75-5, as amended by Executive Order 99-4 and 2009-09 issued by the Governor of the State of Arizona.
17. **Choice of Law.** The laws of the State of Arizona govern this Agreement and will apply to any action relating to this Agreement. Any court action must be brought in a court in Pima County, Arizona.
18. **Default/Termination.**
 - 18.1. **Termination; Cure.** If, in the sole judgment of County, Operator does not perform in accordance with any of the conditions of this agreement, or if Operator is in default of any provision of this Agreement, County will give Operator written notice specifying the nature of the default. County may terminate this Agreement if Operator fails to remedy the default within thirty (30) calendar days of the County's notice of default; provided, however, that if the nature of Operator's default is such that more than thirty (30) calendar days are reasonably required for its cure, then Operator will not be in default if Operator commences

such cure with said thirty (30) calendar days and thereafter diligently prosecutes such cure to completion, provided such cure is completed within one hundred twenty (120) calendar days of the notice by County.

18.2. Immediate Termination without Notice. Notwithstanding the provisions of Section 18.1 above, County may terminate this Agreement immediately for any of the following:

18.2.1. failure of Operator to carry the required insurance;

18.2.2. violation of any law by Operator or any unlawful activities carried out on the Facility;

18.2.3. any action or omission by Operator that causes a threat to the health or safety of the general public or the users of the facility or constitutes a nuisance;

18.2.4. any actions or omissions by Operator that unduly disturb the quiet enjoyment of neighboring property owners or occupants;

18.2.5. Operator commits a third default in a twelve (12) month period, regardless of whether or not Operator timely cured the previous defaults.

18.3. Remedies. Either party may pursue any remedies provided by law and in equity for the breach of this Agreement. No right or remedy conferred or reserved 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 in equity or conferred or reserved in this Agreement, including, without limitation, the right to damages arising out of the breach or default of this Agreement.

19. Disposition of Personal Property. Operator will maintain a current inventory of all items of personal property owned by Operator and placed or kept on the Facility by Operator. Any items of personal property left on the Facility upon expiration or earlier termination of this Agreement, including all air and space craft, exhibits, and displays—except those there on loan—will become the property of County and will be surrendered to County free and clear of all liens and encumbrances of every kind, unless waived by County. County may sell or otherwise disposed of those items without liability to Operator.

20. Non-Waiver. The failure of either party to insist in any one or more instances upon the full and complete performance of any of the terms and provisions of this Agreement to be performed by the other party or to take any action permitted as a result thereof 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 to it at any time shall not be construed as an accord and satisfaction.

21. Assignment/Concessions. Operator may not either voluntarily or by operation of law, assign or transfer its rights or obligations under this Agreement to any other person. Operator may, in the normal course of business, enter into concession agreements for the operation of specific aspects of the Pima Air and Space Museum, such as food concessions, and may hire contractors to perform work such as turf maintenance and landscaping. But Operator may not delegate its overall responsibility for all operations of the Pima Air and Space Museum without County's prior written consent, which may be withheld at the reasonable discretion of County, and no delegation of duties or hiring of contractors will in any way relieve Operator of its responsibilities and

obligations under this Agreement. At County's request, Operator will provide County with copies of any contracts and concession agreements it has entered into with respect to the Facility.

22. **Americans With Disabilities Act.** Operator 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, in its operation of the Facility.

23. **Entire Agreement.** This Agreement constitutes the entire agreement between County and Operator with respect to the Facility, and no modification of this Agreement is binding unless in writing and signed by both parties.

24. **Exhibits.** The following exhibits to this Agreement are fully incorporated herein as if set forth at length:

Exhibit A:	Facility Legal Description
Exhibit A-1:	Aerial Photo of Facility
Exhibit B:	Location of Solar Carports

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.)

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the day, month, and year written below

COUNTY:

Pima County, a political subdivision of the State of Arizona

Richard Elias
Chairman, Board of Supervisors

Date: _____

ATTEST:

Clerk of the Board

Date _____

APPROVED AS TO CONTENT:

Diane Frisch
Director, Attractions and Tourism

APPROVED AS TO FORM:

Regina L. Nassen
Deputy County Attorney

OPERATOR:

Arizona Aerospace Foundation, Inc., an Arizona non-profit corporation.

Scott Marchand
Executive Director

Date 9/13/2019

EXHIBIT "A"

Pima Air & Space Museum, 6000 East Valencia Road, Tucson, AZ 85706, United States of America
Latitude: 32.138227 | Longitude: -110.868847

Property Description

W2 SE4 & SW4 EXC VALENCIA RD & EXC SPRR RWAY,
JULIAN WASH & EXC N990' W990' M/L SEC 12-15-14
203.92 AC (ABAND 7814/895)

(FORMERLY 139-01-002N)



EXHIBIT "A-1"

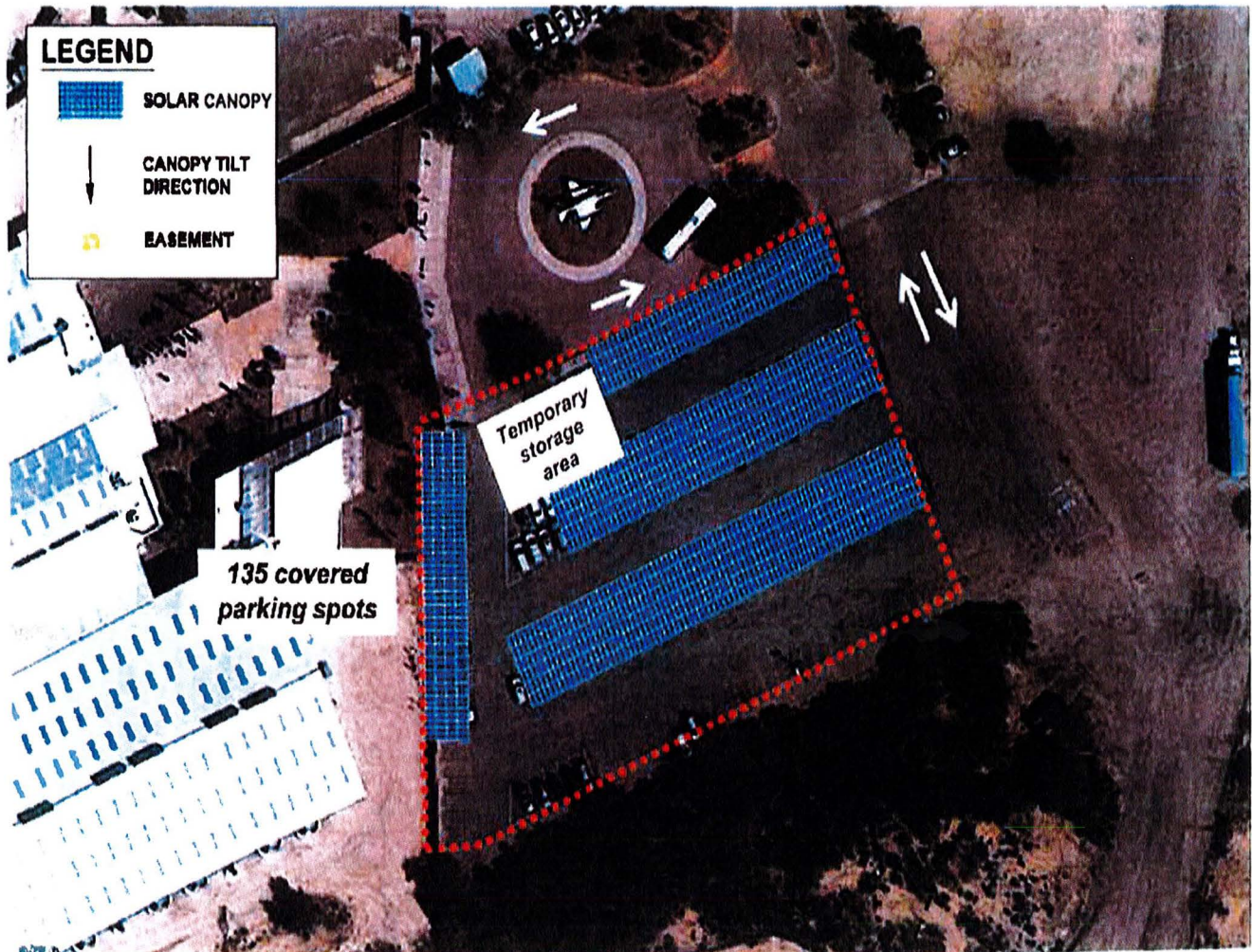


6000 E. Valencia parking lot repave project

- Repave
- - - Seal coat

EXHIBIT "B"

Proposed Layout



6000 E. Valencia

Solar Covered Carports

EXHIBIT "B"

Approval

As the site specific approving authority for the solar covered parking project at Pima Air & Space Museum, I approve of the project layout, scheduling and duration as presented in this powerpoint.

Signature

Date

Print Name

SOLON 

Approval

As the Director of Facilities for the solar covered parking project at the Pima Air & Space Museum building, I approve of the project layout, scheduling and duration as presented in this powerpoint.

Signature

Date

Print Name

SOLON 