



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

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 02/04/20

\* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Line and Space, L.L.C. (Headquarters: Tucson, AZ)

**\*Project Title/Description:**

Architectural and Engineering Design Services: Northwest County Service Center (XNWHLC)

**\*Purpose:**

Award: Contract No. CT-FM-20-111. This award of contract is recommended to the highest qualified consultant in the amount of \$344,095.35 for a contract term from 02/04/20 to 04/30/22 for the design of the Northwest County Service Center. Administering Department: Facilities Management.

**\*Procurement Method:**

Solicitation for Qualifications No. SFQ-PO-1900018 was conducted in accordance with A.R.S. § 34-603 and Pima County Board of Supervisors Policy D 29.1. Five (5) responsive statements of qualifications were received and evaluated by a five (5) member committee using qualifications and experience-based selection criteria. Based upon the evaluation of the respondents' written representations of their qualifications and necessary due diligence, a short list of four (4) respondents were invited to interviews. As a result of the combined scoring of the written statements of qualifications and interviews, the highest qualified respondent is recommended for award.

Attachments: Notice of Recommendation for Award and Contract.

**\*Program Goals/Predicted Outcomes:**

Starting with a conceptual design phase, the goal is to establish an overall plan for converting an existing building and previously developed site into a County owned multi-agency service center that will house the Health, Community Services and Employment Training, and Probation departments. The plan will also include provisions for construction of a new health clinic building with services to be provided by a qualified health care provider. The Architectural and Engineering design professionals will partner with the County and a Construction Manager at Risk (CMAR) to mutually establish a documented plan that will describe the future elements that will comprise the construction scope of work.

**\*Public Benefit:**

This work will provide a direction for developing this County service center in phases. The new facility will consolidate a number of County service agencies that are currently in leased buildings and spaces, some of which include leases that extend for many years. Development of this facility will benefit the County taxpayers by redirecting lease payments into the construction of a County owned property located in an area of the greater community with a critical need for services.

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

At the conclusion of this first phase of the work the County will be provided with an overall plan for constructing the service center including a phasing plan, project schedule, and conceptual construction cost estimates for renovation of the existing 50,000 square foot building, with an addition for the Probation Department, provisions for a new health clinic building pad, and site improvements to support the buildings and proposed services.

**\*Retroactive:**

No.

TO: COB 1-28-2020 (1)  
Vers: 1  
Pgs: 152  
ADDENDUM  
Revised 9/2019

**Contract / Award Information**

Document Type: CT Department Code: FM Contract Number (i.e., 15-123): 20-111  
Effective Date: 02/04/20 Termination Date: 04/30/22 Prior Contract Number (Synergen/CMS): \_\_\_\_\_  
☒ Expense Amount: \$\* 344,095.35 ☐ Revenue Amount: \$ \_\_\_\_\_  
\*Funding Source(s) required: FM-Capital Projects Non-Bond

Funding from General Fund? ☐ Yes ☒ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_  
Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No  
If Yes, is the Contract to a vendor or subrecipient? \_\_\_\_\_  
Were insurance or indemnity clauses modified? ☐ Yes ☒ No  
If Yes, attach Risk's approval.  
Vendor is using a Social Security Number? ☐ Yes ☒ No  
If Yes, attach the required form per Administrative Procedure 22-10.

**Amendment / Revised Award Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_  
Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_  
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: Scott Loomis, CPPB 02/03/2020 Theresa Lopez 01-24-20  
Department: Procurement John Berry, Procurement Director Telephone: 520-724-8272  
Department Director Signature/Date: [Signature] 1/27/2020 1-24-2020  
Deputy County Administrator Signature/Date: \_\_\_\_\_  
County Administrator Signature/Date: C. D. Delaney 1/24/2020  
(Required for Board Agenda/Addendum Items)



## **NOTICE OF RECOMMENDATION FOR AWARD**

Date of Issue: January 23, 2020

The Facilities Management Department hereby issues formal notice to respondents to **Solicitation No. SFQ-PO-1900018 for Architectural and Engineering Design Services for Northwest County Service Center (XNWHLC)** that the following listed respondent will be recommended for award as indicated below. The award action is scheduled to be performed by the Board of Supervisors on or after February 4, 2020.

Award is recommended to the most qualified Respondent.

### **AWARDEE NAME**

**Line and Space, L.L.C.**

### **OTHER RESPONDENT NAMES**

GLHN Architects & Engineers, Inc.  
M. Arthur Gensler Jr. & Associates, Inc.  
WSM Architects, Inc.

***NOTE: Pursuant to A.R.S. §34-603(H), only the names of the firms on the final list may be disclosed.***

Issued by: Scott Loomis, CPPB; Procurement Officer

Telephone Number: 520-724-8272

This notice is in compliance with Pima County Procurement Code §11.12.010(C) and §11.20.010(C).

Copy to: Pima County SBE via e-mail at [SBE@pima.gov](mailto:SBE@pima.gov)

**PIMA COUNTY FACILITIES MANAGEMENT DEPARTMENT**

**PROJECT:** ARCHITECTURAL AND ENGINEERING DESIGN SERVICES:  
NORTHWEST COUNTY SERVICE CENTER (XNWHLC)

**CONSULTANT:** LINE AND SPACE, L.L.C.  
627 E. SPEEDWAY BLVD.  
TUCSON, ARIZONA 85705

**CONTRACT NO.:** CT-FM-20-111

**AMOUNT:** \$344,095.35

**FUNDING:** FM-CAPITAL PROJECTS NON-BOND

**CONSULTANT SERVICES CONTRACT**

This Contract is entered into between Pima County, a body politic and corporate of the State of Arizona, hereafter called COUNTY, and Line and Space, L.L.C., hereinafter called CONSULTANT, and collectively referred to as the Parties.

**WITNESSETH**

WHEREAS, COUNTY requires the services of a CONSULTANT registered in the State of Arizona and qualified to provide Architectural and Engineering Design Services for the Northwest County Service Center; and

WHEREAS, CONSULTANT is willing, qualified, and properly registered within the State of Arizona to provide such services; and

WHEREAS, based on CONSULTANT's representations in response to Pima County Solicitation No. SFQ-PO-1900018, CONSULTANT was determined to be the most qualified for this Project; and

WHEREAS, CONSULTANT has proposed to perform the work at a price acceptable to COUNTY.

NOW, THEREFORE, in consideration of the foregoing recitals and other valuable and good consideration, the parties hereto agree as follows:

**ARTICLE 1 – TERM AND EXTENSION/RENEWAL/CHANGES**

This Contract, as approved by the Board of Supervisors, commences on February 4, 2020, and terminates on April 30, 2022, unless sooner terminated or further extended pursuant to the provisions of this Contract.

COUNTY has the option to extend the contract termination date for purposes of project completion. Any modification or extension of the contract termination date must be by formal written amendment executed by the Parties.

**ARTICLE 2 – SCOPE OF SERVICES**

CONSULTANT agrees to provide Architectural and Engineering Design Services for the COUNTY as described in **EXHIBIT "A" - SCOPE OF SERVICES (9 pages)**, and **EXHIBIT "C" – GENERAL CONDITIONS (48 pages)** attachments to this contract, and to complete such services within the term and value of this contract as it may be modified in accordance with **Article 5**. Amendments and changes to the Scope must be approved by the Board of Supervisors or the Procurement Director, as required by the Pima County Procurement Code, before the work under the amendment commences.

### **ARTICLE 3 - DEFINITIONS**

**Other Direct Costs.** Other Direct Costs are those costs that can be specifically identified within this Contract, are required for performance of the Contract, and are actually incurred. This includes Subcontract or Subconsultant costs; reproduction, copy and printing costs; courier services; and similar costs specifically necessary for this Contract and approved by COUNTY.

**Cost Plus Fixed Fee.** The modified Cost Plus Fixed Fee (CPFF) is a compensation method that provides compensation to the Consultant for actual costs of Direct Labor, Indirect, and Other Direct Costs incurred up to a "not-to-exceed" amount, plus a fixed Fee amount for the successful performance of the work. The Fee amount may initially be determined as a percentage of the estimated not-to-exceed costs. Once negotiated, the Fee amount becomes fixed and does not vary with actual costs. The Fee may only be in accordance with **Article 5**.

**Critical Path Method.** The Critical Path Method (CPM) is a way of depicting the sequence of activities in a project, including interdependencies, and containing all activities needed for successful completion of the Work. Delay in the completion of activities on the critical path will extend the completion date.

**Direct Labor Costs.** Direct Labor Costs are the total number of allowable hours worked on the Project by each individual multiplied by the Labor Rate, identified in EXHIBIT "B" - COMPENSATION SCHEDULE.

**Fee.** Fee is the amount, independent of actual costs, that the CONSULTANT is allowed for assuming risk and to stimulate efficient contract performance. Fee includes compensation to CONSULTANT for both profit and unallowable costs. Efficient cost control will allow CONSULTANT to earn a higher profit margin without adjustment of the fee amount. Conversely, inefficient cost control will result in a lower profit margin.

**Float.** Float is the number of days by which an activity not on the critical path in a CPM network may be delayed before it extends the completion date.

**Labor Rates.** Labor rates are the actual cost of salary paid to employees of CONSULTANT and identified in EXHIBIT "B" - COMPENSATION SCHEDULE.

**Not to Exceed Cost.** The Not to Exceed Cost for a task is the sum of the agreed Direct Labor costs, indirect costs, and other reimbursable costs of the task defined in the original Project Baseline. Actual Direct Labor costs may be invoiced based on hours worked, per discipline, per task, or a percent complete by task for the period. CONSULTANT assumes all risk for providing the requested task/deliverables at or below the original estimated cost, unless an equitable adjustment to the scope and/or fee are made by amendment to the Contract. Any costs incurred by CONSULTANT beyond the not-to-exceed amount identified which are not attributable to any change in the project baseline are unallowable. Unallowable costs are compensated through the CONSULTANT's fixed Fee.

**Indirect Costs.** Indirect costs are at the overhead rate identified in EXHIBIT "B" - COMPENSATION SCHEDULE.

**Project Baseline.** The agreed Contract scope of services, total Not-to-Exceed CPFF, the allocation thereof among Contract tasks, and the accompanying schedule and expectations/assumptions upon which the scope of services and schedule are based, collectively constitute the Project Baseline.

### **ARTICLE 4 - COMPENSATION AND PAYMENT**

In consideration of the services specified in this Contract, COUNTY agrees to pay CONSULTANT on a modified Not-to-Exceed CPFF basis, not to exceed the total amount of this Contract. Cost is comprised of CONSULTANT's Direct Labor Costs, Indirect Costs and Other Direct Costs. CONSULTANT's fee will remain fixed and may be adjusted only as provided in **Article 5** and **Article 6**.

The total of all payments to CONSULTANT for services provided under this Contract will not exceed Three Hundred Forty Four Thousand Ninety Five Dollars and Thirty Five Cents (\$344,095.35). CONSULTANT's total CPFF will be allocated among the major tasks contemplated by this Contract in such manner that each major

deliverable will have associated with it a not-to-exceed cost, plus a fixed fee amount, incorporated herein as **EXHIBIT "B" – COMPENSATION SCHEDULE (110 pages)**. CONSULTANT may invoice monthly for the actual costs incurred plus a pro-rata portion of the fee amount for each task. CONSULTANT will calculate actual costs based on actual hours spent, to which the agreed overhead rate may be applied, plus Other Direct Costs. Actual Costs may then be represented as percentage of the "not to exceed" cost amount associated with that task on the CONSULTANT's invoice for billing purposes. Calculations and supporting data will be made available to COUNTY at any time, upon request. The cumulative payment for the actual costs of any task may not be more than the "not to exceed" cost amount associated with that task. Upon completion of the Scope of Work, (including acceptance by COUNTY of all associated deliverables), COUNTY will pay the balance of the fixed fee to CONSULTANT.

Hourly rates and all other rates included under this Contract will remain fixed throughout the term of the contract. COUNTY may consider adjustments to rates in connection with any extensions of the contract term.

Unless otherwise agreed, CONSULTANT will submit invoices monthly. All invoices will be accompanied by a narrative description of the work performed during the period covered by the invoice, time accounting information, and an allocation of all direct costs, including reimbursable costs and subconsultant charges, to the tasks identified in the Scope of Services for which those costs were incurred. The time accounting information should be sufficient to show the workers and hours worked by day for the period covered by the invoice. Subconsultant charges must be supported by appropriate documentation with each separate invoice submitted.

For the period of record retention required under **Article 25**, COUNTY reserves the right to question any payment made under this Article and to require reimbursement therefor by setoff or otherwise for payments determined to be improper or contrary to the Contract or law.

CONSULTANT will not perform work in excess of the Contract Amount without prior authorization by an amendment executed by COUNTY. Work performed in excess of the Contract Amount without prior authorization by amendment is at CONSULTANT'S own risk. Additional Services identified in EXHIBIT "B" - COMPENSATION SCHEDULE, are services within the scope of this Contract but not included within the Tasks identified as of the effective date of this Contract. If ordered, CONSULTANT will invoice additional Services at the rates incorporated into this Contract as in EXHIBIT "B" - COMPENSATION SCHEDULE. COUNTY may add additional services throughout the term of the Contract by providing notice in writing to CONSULTANT. Hourly billable rates shown in EXHIBIT "B" - COMPENSATION SCHEDULE will only be adjusted by written amendment to the Contract. The Parties may add additional required professional classifications or disciplines to EXHIBIT "A" - SCOPE OF SERVICES by written amendment at any time.

COUNTY has ten (10) calendar days from the date of invoice to notify CONSULTANT of any invoicing discrepancies. COUNTY and CONSULTANT will meet to resolve any discrepancies before the invoice is approved or rejected for payment. Subconsultant charges must be supported by appropriate documentation upon request by COUNTY.

CONSULTANT will not perform work in excess of the Contract Amount without prior authorization by an amendment executed by COUNTY. Work performed in excess of the Contract Amount without prior authorization by amendment shall be at CONSULTANT'S own risk.

#### **ARTICLE 5 – PROJECT BASELINE AND ADJUSTMENTS**

- A. COUNTY and CONSULTANT have agreed upon the Project scope and the total CPFF, and will prepare a CPM-based schedule for the performance of the work. The schedule is based on assumptions and expectations agreed upon by the Parties. Schedule estimates for the timeframes associated with outside party activities, i.e. design and other reviews, and/or permits or other clearances do not represent commitments made by either outside agencies or the permit-granting entities of County. This Project Baseline represents a firm commitment by the Parties to complete the work within the schedule and total cost identified in the Baseline, subject to schedule variations by outside parties and other factors beyond the control of the Parties.

- B. Although the Baseline reflects the best estimates and expectations of the Parties at the time of agreement, there is an element of uncertainty associated with the design process that makes the actual schedule and effort required to complete the work difficult or impossible to establish in advance. Unusual citizen input, litigation, regulatory changes, significant delays by utilities or others, unforeseen decisions or commitments by policy makers, or other unanticipated events or factors beyond the control of the Parties that differ materially from the expectations of the Parties may delay or disrupt the schedule and/or require a change in the level of resources or effort. The Project Baseline may be adjusted as follows:
1. A delay in the work attributable to a failure by COUNTY to adhere to its estimates with respect to schedule is an excusable delay for which an adjustment may be made to the schedule. In any such case affecting a task on the critical path, the schedule of the affected task or activity may be extended one (1) day for each day of COUNTY-caused delay; provided, however, that if the COUNTY-caused delay overlaps a period of delay attributable to any other cause, the extension for COUNTY-caused delay is limited to the number of non-overlapped days of COUNTY-caused delay.
  2. There is no adjustment for any delay in the work attributable to a failure by CONSULTANT to adhere to its commitments with respect to schedule. In the event of a significant delay attributable to a failure by CONSULTANT to adhere to its schedule expectations, CONSULTANT will provide a recovery plan to COUNTY within five (5) days of COUNTY's request. For the purposes of this paragraph, a delay arising from or attributable to a necessity for CONSULTANT to make more than two (2) submissions of plans or documents for approval is a failure by CONSULTANT to adhere to its schedule commitments. CONSULTANT's work associated with additional reviews is non-compensable.
  3. A delay in the work attributable to any other cause that differs materially from the expectations of the Parties regarding that cause is an excusable delay for which the Parties will negotiate an appropriate schedule adjustment. If the period of delay attributable to any cause under this paragraph overlaps a period of delay attributable to any other cause, the adjustment under this paragraph will be made first and the delay attributed to such other cause will be limited to that occurring outside of the overlap.
  4. If any of the causes of delay in Paragraphs 1 or 3 above affects a task or activity on the critical path, then the schedule adjustment may include adjustment to the completion date. If the cause does not affect a task or activity on the critical path, then the adjustment will be made from Float and the completion date will not change.
  5. If any of the causes of delay in Paragraphs 1 or 3 above results in material provable additional costs to the affected task or tasks as a result of disruption of the schedule, then the Parties will negotiate an equitable adjustment to the cost for the affected task or tasks, but not to the fee.
  6. The Parties will negotiate an equitable adjustment of cost and fee for any task or tasks for which there is any significant change in the level of effort arising from additional or changed work requested or directed in writing by COUNTY that materially deviates from or adds to the baseline expectations or assumptions of the Parties with respect to the work.
  7. If any action, comment, cause, decision, or other event attributable to any third party results in a change in requirements that differs materially from expectations, then the Parties will negotiate in good faith an equitable adjustment in the cost and fee for the affected task or tasks.
- C. CONSULTANT agrees to complete the work by the completion date in the schedule, as it may be adjusted under the preceding provisions of this Article. Costs incurred by CONSULTANT to complete the work after the completion date in the schedule are not reimbursable under this Contract.

## **ARTICLE 6 – REALLOCATION OF FUNDS**

Given the magnitude and complexity of the scope required by this Contract, the Parties understand that the actual cost to perform specific tasks may vary from the estimates reflected in EXHIBIT "A" - SCOPE OF SERVICES and EXHIBIT "B" – COMPENSATION SCHEDULE.

If the actual cost to complete a task is less than the estimated amount for that task, the cost savings realized accrues to COUNTY. With the agreement of the Parties, COUNTY may reallocate the cost savings to other tasks in EXHIBIT "A" - SCOPE OF SERVICES and EXHIBIT "B" – COMPENSATION SCHEDULE as follows:

- A. Reallocation between subtasks in EXHIBIT "A" - SCOPE OF SERVICES under any one of the major task categories in EXHIBIT "B" – COMPENSATION SCHEDULE may be made between the COUNTY's department representative and the CONSULTANT's project manager by written agreement.
- B. County's Procurement Director may make a reallocation among the major tasks in EXHIBIT "B" – COMPENSATION SCHEDULE by a Contract amendment, provided that the transfer does not increase the total amount of the Contract.
- C. The Board of Supervisors may make any reallocation or adjustment in EXHIBIT "A" - SCOPE OF SERVICES or EXHIBIT "B" – COMPENSATION SCHEDULE that increases the total contract amount through a Contract Amendment.

Costs and Fee may not be reallocated from any task on which work has not progressed significantly and which does not include actual or demonstrable savings or reductions in required effort such that the task may be completed for less than the balance of the task remaining after the transfer.

## **ARTICLE 7 – INSURANCE**

The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. COUNTY in no way warrants that the minimum limits contained herein are sufficient to protect the CONSULTANT from liabilities that arise out of the performance of the work under this Contract. The CONSULTANT is free to purchase additional insurance.

CONSULTANT'S insurance will be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers will have 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 the CONSULTANT from potential insurer insolvency

### **7.1 Minimum Scope and Limits of Insurance:**

CONSULTANT will procure and maintain, until all of their obligations have been discharged, coverage with limits of liability not less than those stated below.

- 7.1.1 General Liability (CGL) – Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy will include bodily injury, property damage, and broad form contractual liability coverage.



- 7.1.2 Automobile Liability – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000.
- 7.1.3 Workers' Compensation and Employers' Liability - Statutory requirements and benefits. Coverage is compulsory for employers of one or more employees. Employer's Liability - \$1,000,000.  
Note: The Workers' Compensation requirement will not apply to a CONSULTANT that is exempt under A.R.S. § 23-901, and when such CONSULTANT executes the appropriate COUNTY Sole Proprietor or Independent CONSULTANT waiver form.
- 7.1.4 Professional Liability (Errors and Omissions) Insurance – This insurance is required when soliciting work from licensed professionals. The policy limits will be not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate. The policy will cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, CONSULTANT warrants that any retroactive date under the policy will precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.

7.2 Additional Insurance Requirements:

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

- 7.2.1 Additional Insured Endorsement: The General Liability and Business Automobile Liability Policies will each be endorsed to include COUNTY, their departments, districts, boards, commissions, officers, officials, agents, and employees as additional insured's with respect to liability arising out of the activities performed by or on behalf of the CONSULTANT.
- 7.2.2 Subrogation Endorsement: The General Liability, Business Automobile Liability and Workers' Compensation Policies will each contain a waiver of subrogation endorsement in favor of COUNTY, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the CONSULTANT.
- 7.2.3 Primary Insurance Endorsement: The CONSULTANT'S policies will stipulate that the insurance afforded the CONSULTANT will be primary and that any insurance carried by the Department, its agents, officials, employees or COUNTY will be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 7.2.4 Insurance provided by the CONSULTANT will not limit the CONSULTANT'S liability assumed under the indemnification provisions of this Contract.

7.3 Notice of Cancellation:

For each insurance policy required by the insurance provisions of this Contract, the CONSULTANT must provide to COUNTY, within two (2) business days of receipt, a notice if a policy is suspended, voided, or cancelled for any reason. Such notice will be mailed, emailed, hand-delivered or sent by facsimile transmission to Pima County Procurement Department, 130 West Congress Street, Tucson AZ 85701, and Fax 520-724-4434.

7.4 Verification of Coverage:

CONSULTANT will furnish COUNTY with certificates of insurance (valid ACORD form or equivalent approved by COUNTY) as required by this Contract. An authorized representative of the insurer will sign the certificates.

- 7.4.1 All certificates and endorsements, as required by this written agreement, are to be received and approved by COUNTY before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 7.4.2 All certificates required by this Contract will be sent directly to the Department. COUNTY project or contract number and project description will be noted on the certificate of insurance. COUNTY reserves the right to require complete copies of all insurance policies required by this Contract at any time.

7.5 Approval and Modifications:

COUNTY Risk Management reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

**ARTICLE 8 – INDEMNIFICATION**

To the fullest extent permitted by law, CONSULTANT will indemnify, defend, and hold harmless COUNTY, their officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, including reasonable attorney's fees and court costs, to the extent caused by any negligent, reckless or intentionally wrongful act or omission of the CONSULTANT, its agents, employees or anyone acting under its direction or control or on its behalf in connection with performance of this Contract. The obligations under this Article shall not extend to the negligence of COUNTY, their agents, employees or indemnities.

All warranty and indemnification obligations under this contract shall survive expiration or termination of the contract, unless expressly provided otherwise. The Parties agree that any indemnification provision inconsistent with A.R.S. § 34-226 is, in all cases, not void, but will be interpreted and applied as if it were consistent with A.R.S. § 34-226.

Upon request, CONSULTANT may fully indemnify and hold harmless any private property owner granting a right of entry to CONSULTANT for the purpose of completing the project. The obligations under this Article do not extend to the negligence of COUNTY, their officers, agents, employees or indemnities.

**ARTICLE 9 – COMPLIANCE WITH LAWS**

CONSULTANT will comply with all applicable federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract must be brought and maintained in Superior Court in Pima County. Any changes in the governing laws, rules, and regulations during the term of this Contract apply, but do not require an amendment.

**ARTICLE 10 – STATUS OF CONSULTANT**

The status of the CONSULTANT is that of an independent contractor and CONSULTANT is not considered an employee of Pima County and is not entitled to receive any of the fringe benefits associated with regular employment, and will not be subject to the provisions of the merit system. CONSULTANT is responsible for payment of all Federal, State and Local taxes associated with the compensation received by CONSULTANT from COUNTY. CONSULTANT is responsible for program development and operation without supervision by COUNTY.

**ARTICLE 11 – CONSULTANT'S PERFORMANCE**

CONSULTANT will perform the work in accordance with the terms of the contract and with the degree of care and skill required of any similarly situated Arizona registrant. CONSULTANT will employ suitably trained and skilled

professional personnel to perform all required services under this Contract. Prior to changing any key personnel, especially those key personnel COUNTY relied upon in making this contract, CONSULTANT will obtain the approval of COUNTY.

CONSULTANT is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all its effort and other services furnished by CONSULTANT under this Agreement. Without additional compensation, CONSULTANT will correct or revise any errors, omission, or other deficiencies in all products of its efforts and other services provided. This includes resolving any deficiencies arising out of the acts or omissions of CONSULTANT found during or after the course of the services performed by or for CONSULTANT under this Agreement, regardless of COUNTY having knowledge of or condoning/accepting the products or the services. Correction of such deficiencies will be at no cost to COUNTY.

#### **ARTICLE 12 – NON-WAIVER**

The failure of COUNTY to insist in any one or more instances upon full and complete compliance with any of the terms and provisions of this Contract 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 it at any time is not an accord and satisfaction.

#### **ARTICLE 13 – SUBCONSULTANT**

CONSULTANT will be fully responsible for all acts and omissions of its SUBCONSULTANT and of persons directly or indirectly employed by SUBCONSULTANT and of persons for whose acts any of them may be liable to the same extent that CONSULTANT is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract creates any obligation on the part of COUNTY to pay or see to the payment of any money due any SUBCONSULTANT, except as may be required by law.

#### **ARTICLE 14 – NON-ASSIGNMENT**

CONSULTANT will not assign its rights to this Contract in whole or in part, without prior written approval of COUNTY. COUNTY may withhold approval at its sole discretion, provided that COUNTY will not unreasonably withhold such approval.

#### **ARTICLE 15 – NON-DISCRIMINATION**

CONSULTANT agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this Contract as if set forth in full herein **including flow down of all provisions and requirements to any subconsultants**. During the performance of this contract, CONSULTANT and its SUBCONSULTANTS will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

#### **ARTICLE 16 – AMERICANS WITH DISABILITIES ACT**

CONSULTANT 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. If CONSULTANT is carrying out government programs or services on behalf of COUNTY, then CONSULTANT will maintain accessibility to the program to the same extent and degree that would be required of the COUNTY under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so may result in the termination of this Agreement.

#### **ARTICLE 17 – CANCELLATION FOR CONFLICT OF INTEREST**

This Contract is subject to the provisions of A.R.S. §38-511 which provides in pertinent part:

"The state, its political subdivisions or any department of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract."

#### **ARTICLE 18 – TERMINATION OF CONTRACT FOR DEFAULT**

- A. Upon a failure by CONSULTANT to cure a default under this Contract within ten (10) days of receipt of notice from COUNTY of the default, COUNTY may, in its sole discretion, terminate this Contract for default by written notice to CONSULTANT. In this event, COUNTY may take over the work and complete it by contract or otherwise. In such event, CONSULTANT will be liable for any damage to the COUNTY resulting from CONSULTANT's default, including any increased costs incurred by COUNTY in completing the work.
- B. The occurrence of any of the following, without limitation to the named events, constitutes an event of default:
  - 1. Abandonment of or failure by CONSULTANT to observe, perform or comply with any material term, covenant, agreement or condition of this Contract, or to prosecute the work or any separable part thereof with the diligence that will insure completion within the time specified in this contract, including any extension, or a failure to complete the work (or the separable part of the work) within the specified time;
  - 2. Persistent or repeated refusal or failure to supply adequate staff, resources or direction to perform the work on schedule or at an acceptable level of quality;
  - 3. Refusal or failure to remedy defective or deficient work within a reasonable time;
  - 4. Loss of professional registration or business or other required license or authority, or any curtailment or cessation for any reason of business or business operations that would substantially impair or preclude CONSULTANT's performance of this Contract;
  - 5. Disregard of laws, ordinances, or the instructions of COUNTY or its representatives, or any otherwise substantial violation of any provision of the contract;
  - 6. Performance of work hereunder by personnel that are not qualified or permitted under state law or local law to perform such services;
  - 7. Commission of any act of fraud, misrepresentation, willful misconduct, or intentional breach of any provision of this Contract; or
  - 8. If a voluntary or involuntary action for bankruptcy is commenced with respect to CONSULTANT, or CONSULTANT becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver or liquidator appointed in respect of its assets.
- C. In the event of a termination for default:
  - 1. All finished and unfinished drawings, specifications, documents, data, studies, surveys, drawings, photographs, reports and other information in whatever form, including electronic, acquired or prepared by CONSULTANT for this project become COUNTY's property and will be delivered to COUNTY not later than five (5) business days after the effective date of the termination;

2. COUNTY may withhold payments to CONSULTANT arising under this or any other Contract for the purpose of set-off until such time as the exact amount of damage due COUNTY from CONSULTANT is determined; and
  3. Subject to the immediately preceding subparagraph 2., COUNTY's liability to CONSULTANT will not exceed the Contract value of work satisfactorily performed prior to the date of termination for which COUNTY has not previously made payment.
- D. COUNTY will not terminate the Contract for default or charge CONSULTANT with damages under this Article, if—
1. Excepting item 8. in paragraph B above, the event of default or delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of CONSULTANT. Examples of such causes include—
    - (i) Acts of God or of the public enemy,
    - (ii) Acts of the COUNTY in either its sovereign or contractual capacity,
    - (iii) Acts of another Contractor in the performance of a contract with the COUNTY,
    - (iv) Fires,
    - (v) Floods,
    - (vi) Epidemics
    - (vii) Quarantine restrictions,
    - (viii) Strikes,
    - (ix) Freight embargoes,
    - (x) Unusually severe weather, or
    - (xi) Delays of subcontractors at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both CONSULTANT and the subcontractor(s); and
  2. CONSULTANT, within seven (7) days from the beginning of any event of default or delay (unless extended by COUNTY), notifies COUNTY in writing of the cause(s) therefor. In this circumstance, COUNTY will ascertain the facts and the extent of the resulting delay. If, in the reasonable judgment of COUNTY, the findings warrant such action, COUNTY may extend the time for completing the work.
- E. For the purposes of paragraph A above, "receipt of notice" includes receipt by hand by CONSULTANT's project manager, by facsimile transmission with notice of receipt, or under the Notices clause of this Contract.
- F. If, after termination of the Contract for default, COUNTY determines that the CONSULTANT was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if COUNTY had terminated the Contract for convenience.
- G. The rights and remedies of COUNTY in this Article are cumulative and in addition to any other rights and remedies provided by law or under this contract.

#### **ARTICLE 19 – TERMINATION FOR CONVENIENCE OF COUNTY**

COUNTY may terminate this Contract at any time by giving written notice to CONSULTANT of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials will, at the option of the COUNTY, become its property. If COUNTY terminates the Contract as provided herein, COUNTY will pay CONSULTANT an amount based on the time and expenses incurred by CONSULTANT prior to the termination date, however, no payment will be allowed for anticipated profit on unperformed services.

#### **ARTICLE 20 – NON-APPROPRIATION OF FUNDS**

Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Contract.

In the event of such termination, COUNTY will have no further obligation to CONSULTANT, other than payment for services rendered prior to termination.

#### **ARTICLE 21 – NOTICES**

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

##### **COUNTY:**

Lisa Josker, Director  
Pima County Facilities Management Department  
150 W. Congress, 3<sup>rd</sup> Floor  
Tucson, Arizona 85701  
Tel: (520) 724-3085

##### **CONSULTANT:**

Henry Tom, FAIA, NCARB, Principal  
Line and Space, L.L.C.  
627 E. Speedway Blvd.  
Tucson, Arizona 85705  
Tel: (520) 623-1313

#### **ARTICLE 22 – OTHER DOCUMENTS**

The Parties in entering into this Contract have relied upon information provided in SFQ-PO-1900018, and on representations and information in the CONSULTANT'S response to said SFQ. These documents are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this Contract. CONSULTANT will perform services in accordance with the terms of the Contract and at a level of care consistent with prevailing industry standards. In the event any provision of this contract is inconsistent with those of any other document, the contract provisions will prevail.

#### **ARTICLE 23 – REMEDIES**

Either party may pursue any remedies provided by law for the breach of this Contract, provided, however, that the procedures in **Article 27** are first exhausted. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

#### **ARTICLE 24 – SEVERABILITY**

Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law is ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

#### **ARTICLE 25 – BOOKS AND RECORDS**

CONSULTANT will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of COUNTY.

CONSULTANT will retain all records relating to this contract at least five (5) years after its termination or cancellation or until any related pending proceeding or litigation has been closed, if later. Alternatively, CONSULTANT may, at its option, deliver such records to COUNTY for retention.

#### **ARTICLE 26 – DELAYS**

Neither party hereto will be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party.

#### **ARTICLE 27 – DISPUTES**

In the event of a dispute between the Parties regarding any part of this Contract or the Parties' obligations or performance hereunder, either Party may request a special meeting between their respective representatives to resolve the dispute. If the dispute remains unresolved, then either Party may request escalation of the issue to a

meeting between the Director of the Pima County Department administering this Contract and CONSULTANT'S counterpart official, such meeting to be held within one (1) week of the request, unless otherwise agreed. If the dispute is still not resolved after that meeting, then either Party may pursue such remedy or remedies as may be available to them under the laws of the State of Arizona.

The Parties will continue performance of their respective obligations under this Contract notwithstanding the existence of any dispute.

#### **ARTICLE 28 – OWNERSHIP OF DOCUMENTS**

All original drawings, field data, estimates, field notes, plans, specifications, documents, reports, calculations, and other information developed by CONSULTANT under this contract vest in and become the property of COUNTY and shall be delivered to COUNTY upon completion or termination of the services, but CONSULTANT may retain and use copies thereof. COUNTY agrees that the material will not be used for any project other than the project for which it was designed without the expressed permission of the CONSULTANT.

#### **ARTICLE 29 – PUBLIC INFORMATION**

Pursuant to A.R.S. § 39-121 et seq., and A.R.S. §§ 34-603(H), 604(H), in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted by CONSULTANT in any way related to this contract, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.

Any information submitted related to this Contract that CONSULTANT believes constitutes proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL prior to submittal to COUNTY and be accompanied by an index specifically identifying and describing the general contents of each page so marked. The index is a Public Record and must not include any information considered confidential.

Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., County will release records marked CONFIDENTIAL ten (10) business' days after the date of notice to the CONSULTANT of the request for release, unless CONSULTANT has, within the ten (10) day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release is not counted in the time calculation. COUNTY will notify CONSULTANT of any request for such release on the same day of the request for public release or as soon thereafter as practicable. County is not, under any circumstances, responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor is County in any way financially responsible for any costs associated with securing such an order.

#### **ARTICLE 30 – LEGAL ARIZONA WORKERS ACT COMPLIANCE**

CONSULTANT hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to CONSULTANT'S employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). CONSULTANT will further ensure that each subconsultant who performs any work for CONSULTANT under this contract likewise complies with the State and Federal Immigration Laws.

COUNTY has the right at any time to inspect the books and records of CONSULTANT and any subconsultant in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of CONSULTANT'S or any subconsultant's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting CONSULTANT to penalties up to and including suspension or termination of this Contract. If the breach is by a subconsultant, and the subcontract is suspended or terminated as a result, CONSULTANT must take such steps

as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subconsultant, (subject to COUNTY approval if SBE or MWBE preferences apply) as soon as possible so as not to delay project completion.

CONSULTANT will advise each sub-consultant of COUNTY'S rights, and the sub-consultant's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"SUBCONSULTANT hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to SUBCONSULTANT's employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONSULTANT further agrees that COUNTY may inspect the SUBCONSULTANT's books and records to insure that SUBCONSULTANT is in compliance with these requirements. Any breach of this paragraph by SUBCONSULTANT is a material breach of this contract subjecting SUBCONSULTANT to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article are the responsibility of CONSULTANT. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of CONSULTANT's approved construction or critical milestones schedule, such period of delay is excusable delay for which CONSULTANT is entitled to an extension of time, but not costs.

#### **ARTICLE 31 – ISRAEL BOYCOTT CERTIFICATION**

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

#### **ARTICLE 32 - ENTIRE AGREEMENT**

This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This contract may be modified, amended, altered or extended only by a written Amendment signed by the parties.

IN WITNESS WHEREOF, the parties have affixed their signatures to this Contract on the dates written below.

PIMA COUNTY:

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

\_\_\_\_\_  
Date

ATTEST:

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

APPROVED AS TO FORM

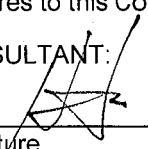
  
Deputy County Attorney

**REGINA NASSEN**

\_\_\_\_\_  
Name (Please Print)

1. 27. 2020  
Date

CONSULTANT:

  
\_\_\_\_\_  
Signature

HENRY TOM, PRINCIPAL CINE AND SPACE  
Name and Title (Please Print)

1/20/2020  
Date