Board of Supervisors Memorandum

November 20, 2018

Extension of Contract for Legislative Representation Services with Racy Associates, Inc.

Background

In 2016, the Board of Supervisors approved a contract with Racy Associates, Inc. to represent the County in legislative issues at the State level. Mr. Racy has represented the County for a number of years in this position and his services as well as results warrant a two-year contract extension as recommended in this memorandum.

Mr. Racy has achieved many legislative achievements most of which have been defensive. Our Legislative Agenda has focused on State cost shifts and transfers and transportation funding. Regarding legislative cost shifts, Mr. Racy has been successful in significantly reducing the State-mandated cost shifts during this Legislative Session. In fact, State cost shifts decreased $3,342,000 in just the last year and reducing HURF diversions will increase revenues $2,561,900. At my direction, Mr. Racy has been pursuing the simple removal of the juvenile detention cost shifts, which represents a future cost of $1,726,900 next year. This is one of the last cost shifts initiated by the State Legislature during the recent economic turndown that should be reversed, along with the State cost transfer regarding administrative cost shifts associated with the Arizona Department of Revenue related to sales taxes collection of which the County has none.

More importantly, Mr. Racy has been instrumental in attempting increased transportation revenues for Pima County. This last Legislative Session he pursued extending the Regional Transportation Authority authorization to increase the half-cent sales tax for transportation at the general direction of the Board. This legislation came within one vote of being approved by the Legislature and was held because of political issues, not merit regarding the validity of the revenue source for transportation.

It is likely services for Racy Associates, Inc. will increase in the coming Legislative Session due to the County Attorney's legislative representative retirement. County Attorney Barbara LaWall has indicated that Mr. Racy could represent Pima County and the Pima County Attorney at the Legislature. Hence, Mr. Racy's contract may require an amendment to increase capacity if he represents both the County and the County Attorney. If such is required, I will process and recommend an amendment to Mr. Racy's contract to include his representation of the County Attorney in legislative matters that coincide with the policy position of the Board of Supervisors.

Recommendation

I recommend the Board of Supervisors approve the amendment to the State Legislative contract for Racy Associates, Inc. in the amount of ($280,000) for (Legislative Sessions 2019 and 2020).

Sincerely,

C.H. Huckelberry
County Administrator

CHH/dr – November 7, 2018

Contract Amendment 1

Pima County Administrator's Office **Project: State Legislative Representation Services** **Contractor: Racy Associates, Inc.** **Contract No.: 17*157** **Contract Amendment No.: 1**	(STAMP HERE)

Orig. Contract Term:	12/02/2016 - 12/01/2018	**Orig. Amount:**	$280,000.00
Termination Date Prior Amendment:	N/A	**Prior Amendments Amount:**	N/A
Termination Date This Amendment:	12/01/2020	**This Amendment Amount:**	$280,000.00
		Revised Total Amount:	$560,000.00

CONTRACT AMENDMENT

The parties agree to amend the above-referenced contract as follows:

1. **Background and Purpose.**

   1.1. Background. On December 2, 2016, County and Contractor entered into the above referenced agreement to provide State legislative representation services. The initial term of the Contract expires on December 1, 2018, but it can be extended by agreement of the parties for up to 4 additional 2-year periods.

   1.2. Purpose. The Board of Supervisors has determined that it is in the best interests of the County to continue to utilize Contractor's services.

2. **Term.** The term of the Contract is extended to December 1, 2020.

3. **Maximum Payment Amount.** The maximum amount the County will spend under this Contract, as set forth in Article 3 of the Contract, will remain at $140,000 per year, for a total of $560,000.00 through the term as extended by this Amendment.

The effective date of this Amendment is December 2, 2018.

All other provisions of the Contract not specifically changed by this Amendment remain in effect and are binding upon the parties.

PIMA COUNTY

_____
Chairman, Board of Supervisors

_____
Date

CONTRACTOR

_____
Michael Racy, Racy Associates, Inc.

10/26/18
Date

ATTEST

_____
Clerk of the Board

_____
Date

APPROVED AS TO FORM

_____
Regina Nassen, Deputy County Attorney

11-1-2018
Date

APPROVED AS TO CONTENT

_____
C.H. Huckelberry, County Administrator

10/26/18
Date

Original Contract

DEPARTMENT: Pima County Administrator's Office **PROJECT: State Legislative Representation Services** **CONTRACTOR: Racy Associates, Inc.** **AMOUNT: $280,000.00 ($140,000.00 per year)** **FUNDING: General Fund**	CONTRACT NO. CT- CA-17-157 AMENDMENT NO. _____ This number must appear on all invoices, correspondence and documents pertaining to this contract. (STAMP HERE)

PROFESSIONAL SERVICES CONTRACT - Board of Supervisors

THIS CONTRACT entered between Pima County, a body politic and corporate of the State of Arizona, hereinafter called COUNTY; and Racy Associates, Inc., hereinafter called CONTRACTOR.

W I T N E S S E T H

WHEREAS, COUNTY has determined it to be in its best interest to retain CONTRACTOR, to represent COUNTY as an authorized public lobbyist with regard to state legislative matters that may impact COUNTY; and

WHEREAS, COUNTY has satisfied itself as to the qualifications of CONTRACTOR consistent with Board of Supervisors Policy D29.6;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1 - TERM AND EXTENSION/RENEWAL/CHANGES

This Contract, as awarded by the Board of Supervisors, commences on December 2, 2016 and terminates on December 1, 2018 unless sooner terminated or further extended pursuant to the provisions of this Contract. The parties may renew this Contract for up to four (4) additional two-year periods or any portion thereof.

Any modification, or extension of the contract termination date will be by formal written amendment executed by the parties hereto.

Amendments to the Contract must be approved by the Board of Supervisors before any work or deliveries under the Amendment commences.

ARTICLE 2 – SCOPE OF SERVICES

CONTRACTOR will serve as an authorized public lobbyist of COUNTY before the Arizona State Legislature and State executive offices and agencies. All work shall be performed under the direction of the Administrator (the "Administrator"). CONTRACTOR will receive assignments, both of a general and specific nature, from the Administrator or the Administrator's designee to prepare, document and draft legislation, testimony and related documents, and pursue, monitor, analyze, negotiate, track and/or lobby for or against legislation, issues and proposals deemed to be of interest by the COUNTY. CONTRACTOR shall maintain on-going contacts with legislative and executive staff relevant to assignments received under this Contract and shall take all actions necessary to keep Southern Arizona's legislative delegation informed concerning

COUNTY's interests and legislative agenda. In addition, CONTRACTOR may be directed to attend scheduled hearings, meetings or other gatherings where issues that may impact the COUNTY are being developed or discussed and report to the COUNTY, through the Administrator, on the status of such issues. Without exception CONTRACTOR shall report to and seek guidance from the Administrator or the Administrator's designee as to positions that are to be advanced on behalf of the COUNTY under this Contract. In all instances, CONTRACTOR shall respond promptly to requests for information from officials and employees of COUNTY.

Key Personnel

Michael M. Racy will perform all the work under this Contract. COUNTY will register Michael Racy as an authorized lobbyist pursuant to Arizona Revised Statutes 41-1231 et. seq. for the time that this Contract is in effect. CONTRACTOR shall not use any other personnel, other than clerical staff, for the performance work under this Contract without prior written approval by the Administrator.

Coordination

CONTRACTOR shall coordinate its efforts with other persons assigned to similar tasks on behalf of the COUNTY including the Administrator, other authorized public lobbyists of the COUNTY or other personnel of the COUNTY designated by the Administrator to assist in a particular legislative project.

Reports

CONTRACTOR shall prepare and transmit to the Administrator and other officials and employees of the COUNTY as appropriate:

A. Periodic written reports of significant occurrences relative to specific assignments undertaken pursuant to this Contract.

B. A comprehensive written report at the end of each Congressional session describing the status of all assignments undertaken pursuant to this Contract and further describing, as appropriate, the additional future work necessary to complete each assignment or implement each project within the COUNTY.

Approvals

Whenever a consent or approval is required hereunder by either party, such consent or approval shall not be unreasonably withheld.

ARTICLE 3 – COMPENSATION AND PAYMENT

Compensation

COUNTY will pay Contractor for the services performed under this Contract at a rate of $190.00 per hour inclusive of all costs whatsoever, including but not limited to travel, lodging, per diem, phone and copying costs. Notwithstanding that hourly rate, total compensation for a day may not exceed one thousand one hundred eighty-five dollars ($1,185.00).

It is the intention of both parties that the above hourly rate will remain firm during the term of the Contract. Rate increases will only be considered in conjunction with a renewal of the Contract. If CONTRACTOR intends to increase the rate upon renewal of the Contract, CONTRACTOR will submit a written notice to COUNTY at least ninety (90) days prior to the expiration date of the Contract, or immediately upon being informed that County wishes to renew the Contract, if that occurs earlier.

The compensation paid by County under to this Contract may not exceed one hundred forty thousand dollars ($140,000.00) per year. CONTRACTOR will not provide services that would cause total

compensation to exceed that amount without prior authorization by an amendment executed by COUNTY. Services provided without such prior authorization will be at CONTRACTOR'S own risk.

Billing

CONTRACTOR shall submit monthly billings for services rendered which, when validated and authorized, shall be paid by COUNTY within forty-five (45) days following the submission. All services must be billed by CONTRACTOR within 30 days of when they are rendered.

COUNTY may refuse to pay any amount billed in an untimely manner, and will refuse to pay any amount billed more than six (6) months late, pursuant to A.R.S. § 11-622(C).

For the period of record retention required under Article 19, COUNTY reserves the right to question any payment made under this Contract and to require reimbursement therefore by setoff or otherwise for payments determined to be improper or contrary to this Contract or law.

ARTICLE 4 - INSURANCE

CONTRACTOR shall procure and maintain, during the life of this Contract, the appropriate comprehensive liability insurance or error and omission insurance and shall be solely responsible for any negligence, error or omission or liability that arises or results from CONTRATOR's performance under this Contract. A copy of the certificate evidencing such insurance shall be provided upon request by the COUNTY.

ARTICLE 5 - INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless Pima County, and its departments, districts, officials, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, (including reasonable attorney's fees), (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. This indemnification will survive the termination of the above listed contract with the Contractor.

ARTICLE 6 - COMPLIANCE WITH LAWS

CONTRACTOR will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation. In the event any services provided under this contract require a license issued by the Arizona Registrar of Contractors (ROC), Contractor certifies that those services will be provided by a contractor licensed by ROC to perform those services in Arizona. The laws and regulations of the State of Arizona govern the rights, performance and disputes of and between the parties. Any action relating to this Contract must be brought in a court of the State of Arizona 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 or revisions.

ARTICLE 7 - INDEPENDENT CONTRACTOR

The status of the CONTRACTOR is that of an independent contractor. Neither CONTRACTOR, nor CONTRACTOR'S officers, agents or employees will be considered an employee of Pima County or be

entitled to receive any employment-related fringe benefits under the Pima County Merit System. CONTRACTOR is responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and will indemnify and hold COUNTY harmless from any and all liability which COUNTY may incur because of CONTRACTOR'S failure to pay such taxes. CONTRACTOR is solely responsible for program development and operation.

ARTICLE 8 - SUBCONTRACTOR

CONTRACTOR is fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that the CONTRACTOR is responsible for the acts and omissions of 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 subcontractor, except as may be required by law.

ARTICLE 9 - ASSIGNMENT

CONTRACTOR may not assign any of its rights, liabilities or obligations under this Contract, or subcontract any of the work under this Contract, to any other person or entity, in whole or in part, without the prior written approval of the Administrator.

ARTICLE 10 - NON-DISCRIMINATION

CONTRACTOR 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 subcontractors**. During the performance of this contract, CONTRACTOR will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

ARTICLE 11 - AMERICANS WITH DISABILITIES ACT

CONTRACTOR will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

ARTICLE 12 - FULL AND COMPLETE PERFORMANCE

The failure of either party to insist in one or more instances upon the full and complete performance of any of the terms or conditions of this Contract to be performed by the other, 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 - CONFLICT OF INTEREST

This Contract is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

CONTRACTOR agrees not to engage or participate in any capacity in private litigation against the COUNTY (i) in conflict with the legislative issues or positions within the CONTRACTOR's scope of work unless CONTRACTOR has obtained a specific written waiver for such adverse representation from the COUNTY, and (ii) in all cases unless CONTRACTOR has notified the offices of the Pima County Attorney in writing within ten (10) days of service in any such litigation of such adverse representation, in which case COUNTY consents to such adverse representation and waives any conflict. CONTRACTOR further agrees not to engage in other legislative representation that is or may reasonably be expected to conflict with the COUNTY's legislative position in any subject area without first obtaining a specific written waiver from the COUNTY. CONTRACTOR shall file with the Administrator, and amend as appropriate during the term of

this Contract, a written disclosure of all other clients represented at the State Legislature by the CONTRACTOR. CONTRACTOR is retained by COUNTY only for the purposes and to the extent set forth in this Contract. CONTRACTOR shall be free to dispose of such portion of its entire time, energy and skill as are not required to be devoted to COUNTY in such manner as it sees fit, to the extent not in conflict with the duties and responsibilities of CONTRACTOR prescribed under this Contract. CONTRACTOR may engage in the representation of other clients in matters before the Board of Supervisors of COUNTY and any of its agencies, boards and commissions, provided that CONTRACTOR has notified the Administrator in writing.

ARTICLE 14 – TERMINATION OF CONTRACT FOR DEFAULT

Upon a failure by CONTRACTOR to cure a material 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 by written notice to CONTRACTOR. In this event, COUNTY may take over the work and complete it by contract or otherwise. In such event, CONTRACTOR will be liable for any damage to the COUNTY resulting from CONTRACTOR's default, including any increased costs incurred by COUNTY in completing the work.

ARTICLE 15 – TERMINATION FOR CONVENIENCE

Either party may terminate this Contract at any time and without cause by serving upon the other party thirty (30) days' advance written notice of such intent to terminate. In the event of such termination, COUNTY'S only obligation to CONTRACTOR will be payment for services rendered prior to the date of termination.

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

ARTICLE 16 - NOTICE

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

COUNTY:

Chuck Huckelberry
County Administrator
Pima County
130 West Congress, 10th Floor
Tucson, Arizona 85701
Phone: (520) 724-8751

CONTRACTOR:
Michael Racy
Racy Associates, Inc.
535 West Burton Drive
Tucson, Arizona 85704
Phone: (520) 906-4646

ARTICLE 17 - REMEDIES

Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

ARTICLE 18 - SEVERABILITY

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

ARTICLE 19 - BOOKS AND RECORDS

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

In addition, CONTRACTOR will retain all records relating to this contract at least five (5) years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

ARTICLE 20- PUBLIC INFORMATION

Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted in response to this solicitation, 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 records submitted in response to this solicitation that CONTRACTOR reasonably believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL by CONTRACTOR prior to the close of the solicitation.

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 CONTRACTOR of the request for release, unless CONTRACTOR has, within the ten 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 will not be counted in the time calculation. CONTRACTOR will be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

County will not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor will County be in any way financially responsible for any costs associated with securing such an order.

ARTICLE 21 – LEGAL ARIZONA WORKERS ACT COMPLIANCE

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

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

Any breach of CONTRACTOR'S or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting CONTRACTOR to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, CONTRACTOR will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion.

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

"SUBCONTRACTOR hereby warrants that it will at all times during the term of this contract comply with all

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

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

ARTICLE 22- GRANT COMPLIANCE

"Not Applicable"

ARTICLE 23 – ISRAEL BOYCOTT CERTIFICATION

Contractor hereby certifies that it is not currently engaged in, and will not for the duration of this Contract engage in, a boycott of Israel as defined by A.R.S. § 35-393.01. Violation of this certification by Contractor may result in action by the County up to and including termination of this Contract.

ARTICLE 24 - 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 date written below.

PIMA COUNTY

Sharon Bronson

Chair, Board of Supervisors

NOV 22 2016

Date

CONTRACTOR

Michael Racy, Racy Associates, Inc.

11/1/16

Date

ATTEST

Robin Brigode

Clerk of Board

NOV 22 2016

Date

APPROVED AS TO FORM

Regina Nassen

Deputy County Attorney

REGINA NASSEN

Print DCA Name

10-31-2016

Date

APPROVED AS TO CONTENT

C. Richard Bunker

County Administrator

10/31/16

Date