



BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS

Award Contract Grant

Requested Board Meeting Date: 12/07/2021

* = Mandatory, information must be provided

or Procurement Director Award:

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

Stratford Art Works, Inc.

***Project Title/Description:**

Joint Development Agreement for Renovation of Teatro Carmen

***Purpose:**

The Non-Profit has proposed a project to the County which involves the Non-Profit, as a subject matter expert ("SME"), providing management and oversight expertise and the raising of significant public and private sector funds to restore and rehabilitate the County Property located at 384 South Meyer Avenue. This Property includes Teatro Carmen, a historic community theatre and cultural landmark and Black Elks Lodge and associated grounds. Both structures are listed in the National Register of Historic Places. Consistent with the County Sonoran Desert Conservation Plan, the County is interested in rehabilitating and restoring the Property and contributing resources and funding, not to exceed one million dollars (\$1,000,000), to the project in conjunction with other public and private contributors with the goal of creating a community venue of historic and cultural value.

***Procurement Method:**

Exempt per 11.04.020

***Program Goals/Predicted Outcomes:**

County, with the assistance of Non-Profit, desires the Property be improved, rehabilitated and restored, consistent with its value as a cultural and historical landmark, to operational condition for community use as an arts and entertainment venue.

***Public Benefit:**

This Agreement will benefit County by relieving it of a portion of the costs and burdens of associated with a rehabilitation and restoration project of this type and scope. The completed project will preserve the architectural history and culture of Tucson, Pima County and the Southwest, create a new venue where the public can gather to build community and enjoy lively arts and the unique culinary culture of the Southwest.

***Metrics Available to Measure Performance:**

Historic restoration and preservation of Southwestern architecture and culture. More opportunity for community building and sharing of local culture and history. Economic impact from increased tourism and community engagement.

***Retroactive:**

No.

REC'D 12/07/2021 10:03 AM
APB

TO: COB 12-2-21 (1)
Vers: 1
pgs: 20
ADDENDUM

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: CT Department Code: FM Contract Number (i.e., 15-123): 22*149
Commencement Date: 12/07/2021 Termination Date: 12/06/2024 Prior Contract Number (Synergen/CMS):
Expense Amount \$ 1,000,000.00 * Revenue Amount: \$ 3,000,000.00

*Funding Source(s) required: General Fund and Donations

Funding from General Fund? Yes No If Yes \$ 1,000,000.00 % 100

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.:

Commencement Date: New Termination Date:

Prior Contract No. (Synergen/CMS):

Expense 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):

Commencement 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: Kevin Button

Department: Facilities Management

Telephone: 520-724-8230

Department Director Signature:

Date: 12/2/2021

Deputy County Administrator Signature:

Date:

County Administrator Signature:

Date: 12/2/2021

Pima County Department of Facilities Management

Project: Joint Development Agreement for Renovation of Teatro Carmen

Contractor: Stratford Art Works, Inc. ("Non-Profit")

Amount: \$1,000,000.00

Contract No.: CT-FM-22*149

Funding: General Fund

Joint Development Agreement for Renovation of Teatro Carmen

This **Joint Development Agreement** ("**Agreement**") is made and entered into this 7th day of December, 2021, by and between Pima County, a political subdivision of the state of Arizona ("**County**") and Stratford Art Works, Inc., an Arizona Non-Profit corporation ("**Non-Profit**") (together referred to as the "**Parties**").

Recitals

- A. The County is purchasing real property at 384 S. Meyer Avenue, Tucson, Arizona, 85701, located on the northwest corner of S. Meyer Avenue and Simpson Street in the Barrio Libre/Barrio Viejo Historic District.
- B. The property consists of two adjacent parcels. One of the parcels is a vacant lot. The other parcel includes two structures: the northernmost building is commonly referred to as "Teatro Carmen" and the southernmost structure is commonly referred to as the "Black Elks Lodge." Both structures are listed in the National Register of Historic Places. Together, the parcels and all improvements thereon are referred to herein and shown in **Exhibit A** as the "**Property**."
- C. The Property is in an historic neighborhood of cultural value and significance but currently, the structures are in a state of disrepair and are not suitable for public use. The County has determined that rehabilitating and restoring the Property will improve the community, promote economic development, and will be consistent with the County Sonoran Desert Conservation Plan, Historic and Cultural Conservation element.
- D. County is authorized to contribute funds toward economic development by A.R.S. § 11-254 and 11-254.04.
- E. The County and Non-Profit share common interests in the preservation, rehabilitation and adaptive re-use of regional historic architecture and the rich cultural influences these spaces have for enhancing the community in Pima County and the Sonoran Desert as set

forth in the County Sonoran Desert Conservation Plan, Historic and Cultural Conservation element.

- F. The Non-Profit is organized around bringing arts and cultural offerings to the public, and restoring and preserving historic properties for artist live/work/performance spaces in Southern Arizona. Non-Profit has specialized experience and expertise in restoring/renovating historic properties and cultural landmarks for community improvement, use, and development and has significant experience raising funds from the public and private sectors for such projects.
- G. The Non-Profit has proposed a project to the County which involves the Non-Profit providing management and oversight expertise and the raising of significant public and private sector funds to restore and rehabilitate the Property including Teatro Carmen, an historic community theatre and cultural landmark. The County is interested in contributing resources and funding, not to exceed one million dollars (\$1,000,000), to the project in conjunction with other public and private contributors with the goal of creating a community venue of historic and cultural value.
- H. County and Non-Profit desire the Property be improved, rehabilitated and restored, consistent with its value as a cultural and historical landmark, to operational condition for community use as an arts and entertainment venue (the “**Project**”).
- I. This Agreement will benefit County by relieving it of the costs and burdens of physically overseeing and managing the Property with County employees during the time that it is being rehabilitated and restored to an operational condition. Non-Profit has experience in similar projects and is able to assist County in achieving the Project goals through its expertise and fundraising experience.
- J. This Agreement is intended to reflect the Parties’ roles, mutual goals and objectives, and the Parties’ respective financial and non-financial commitments to the Project during the Design Phase and the Construction Phase only. For the purposes of this agreement the project Phases are generally described as the following:

Conceptual Phase: This Phase includes the development of preliminary conceptual plans and estimated budget and is considered completed. Non-Profit contracted with Poster Mirto McDonald for a preliminary assessment of the Project and produced a conceptual plan and preliminary estimated budget which is shown in **Exhibit B (“Conceptual Plan”)**. This Conceptual Plan was created prior to the execution of this Agreement and without County input and is subject to current volatile market conditions and other revision as may be determined appropriate for the Project.

Design Phase: This Phase includes development of all construction documents, plans, drawings, specifications, and schematics through permit submittal. During this Phase, and prior to permit submittals, Non-Profit must obtain the County's approval of plans and specifications for the Project.

Construction Phase: This Phase will commence after project funding is available, all plans are finalized and approved by County and permits have been granted for each specific project phase. Construction Phase will be considered complete after the Property has been rehabilitated and restored, as a cultural and historical landmark, to operational condition for community use as an arts and entertainment venue and upon issuance of Certificate of Occupancy. Due to phasing of the Project, the Parties acknowledge there may be more than one Certificate of Occupancy for different specific project phases. All improvements placed upon the Property ("**Improvements**") will become the property of the County at the time they are placed thereon.

Operational Phase: The Parties anticipate that operation of the Property will be governed by a separate operations and maintenance agreement ("**Operating Agreement**").

- K. County will appoint a representative who will be present during Design and Construction phases and during Non-Profit's planning meetings related to the Project, which will include meetings with subcontractors. Non-Profit may appoint a representative to be present at County meetings related to the Project.

Consistent with the above Recitals, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Description of the Property.** The Property consisting of two adjacent parcels is legally described and depicted on **Exhibit A** attached hereto. Parcel 1 includes a main building commonly known as Teatro Carmen to the north and a second building to the south commonly known as the Black Elks Lodge.
2. **Term and Renewal.** The effectiveness of this Agreement is contingent on the County closing on the Acquisition Agreement under which it will purchase the Property. If the closing on the Acquisition Agreement does not occur within 90 days of the execution of this Agreement, this Agreement shall be deemed null and void. The initial term will begin one day after the closing of the purchase, which is anticipated to be on or before January 31, 2022 (the "**Commencement Date**") and will terminate three years after the Commencement Date ("**Initial Term**"). If the Project is not completed during the Initial Term, the Parties may renew this Agreement for two additional one-year periods. The Initial Term and any extensions thereof are referred to herein as the "Term."

3. **Purpose of the Agreement.** The Parties intend this Agreement to cover the period of time during which the Property is in Design and Construction Phases, after which the Property will be functional and operable as a venue for community/public enjoyment of the arts, cultural events, and entertainment. Absent any uncured material breaches of this Agreement by Non-Profit, the County intends that Non-Profit will provide services as the venue operator under the Operating Agreement and the Parties will enter into an Operating Agreement under which Non-Profit will manage and operate the Property.
4. **Non-Profit is Designated as the Subject Matter Expert (“SME”).** County representatives will work with Non-Profit’s representative during the Term of this Agreement for the purpose of managing and overseeing the Design, Construction and Fundraising activities on the Project as described in this Agreement. The Non-Profit’s representative has specialized experience, as described in section F, and is considered a SME.
5. **Use of Public Funds for Improvements.** Any improvements to the Property must meet all statutory requirements and adhere to guidelines, rules and regulations outlined in Title 34 - Public Buildings and Improvements. All contracts for the Project must adhere to Pima County Procurement Department statutory guidelines, rules and regulations for projects involving expenditure of public funds.
6. **County Review and Approval.** During the Term of this Agreement, Non-Profit must obtain the County’s approval of plans and specifications for the Project. County will not unreasonably withhold its approval of plans and specifications, will communicate its approval or disapproval in writing, and will explain the grounds for any disapproval. If County disapproves of submitted plans and specifications, Non-Profit will submit revised plans and specifications addressing the County’s concerns. The Director of the County’s Facilities Management Department, or their designee, is authorized to conduct the review and give approvals and disapprovals on behalf of the County.
7. **Plans.** County Facilities Management will consult with Non-Profit, SME and appropriate County departments, including the Office of Sustainability and Conservation on the design, restoration, fundraising and promotion of the Project and County will develop complete plans ready for submission for permits (“**Plan**”).
8. **Development Costs.** Prior to entering into this Agreement, Non-Profit has paid for certain development and other initial costs for the purposes of evaluating the merits of the Project and creating the Conceptual Plan which includes the estimated budget (“**Development Costs**”).
9. **Title 34 Requirements and County Approval.** County, in consultation with Non-Profit, will engage historic preservation-qualified architects and other consultants. As

a historic preservation and restoration Project, Parties understand contractors may require specialized experience and expertise. All contractors selected to work on the Project will be selected and approved by the County, with advice and input from Non-Profit as SME. All contracts, contractors and improvements will be subject to Title 34 and Pima County Procurement department rules and regulations as described in section 3.2.

10. **Non-Profit as Advisor.** During the Design and Construction Phase, Non-Profit will operate in an advisory role to the County and will obtain County review, input and written approval of historic rehabilitation and restoration elements (signed by the County Administrator or his designee). Any deliverables from architects or other consultants used by the Parties, including plans, reports, studies, and design and as-built documents, will be the property of the County.
11. **Non-Profit Responsible for Fundraising.** During the Term of this Agreement, Non-Profit will undertake fundraising in the private and public sectors to fund the Design and Construction phases consistent with the Conceptual Plan and the Budget. The Parties' respective fundraising and financial commitments are more specifically defined in Sections 19 and 20 below.
12. **Management Fee to Non-Profit.** While Design and Construction Phases are ongoing, Non-Profit will receive an annual management fee of \$75,000 ("**Management Fee**"). The first payment of \$75,000 will be paid in a lump sum from the County Commitment within 15 days after funds are available for Project use. Beginning on the first anniversary of the Commencement Date, a management fee in the amount of \$6,250 per month will be paid from the County Commitment. The total Management Fee paid to Non-Profit will not exceed \$225,000 from all sources during the Initial Term.
13. **Essential Personnel of Non-Profit.** County is relying on the ongoing, integral involvement of Non-Profit's current President, Herb Stratford, for his expertise and experience in similar projects. Mr. Stratford's association with the Non-Profit is a material term of this Agreement. Non-Profit will notify County in advance if at any time it is no longer associated with the current Non-Profit President. County reserves the right to suspend any outstanding payment of Management Fee, should Mr. Stratford's association with Non-Profit change and Non-Profit has not otherwise associated other personnel for the Project acceptable to the County.
14. **Permissible Uses of the Property.** The Parties expect that the vacant parcel of the Property will be available to use for on-site fund-raising events during the Term. With advance notice to County, County's permission, and proper permits from the City of Tucson, Non-Profit may hold fund-raising events at the Property during the Term, provided:

- 14.1. The primary buildings (theater/Black Elks Lodge) are secure and no access is provided to the public; and
 - 14.2. Non-Profit secures liability insurance for the duration of each such event, consistent with the requirements of Section 17 below; and
 - 14.3. Non-Profit secures any necessary permits/authorization from the City of Tucson for the specified event.
15. **County Responsible for Utilities.** As owner, County will be responsible for water, sewer, gas, electric, and alarm system to the Property during the 3-year Initial Term. County will transfer the accounts for the utility services currently in the name of Non-Profit to the County within 15 days of the Commencement Date.
16. **Insurance by County.** Pima County is self-insured and will provide, at its sole cost, casualty and standard liability coverage for the Property.
17. **Insurance Requirements for Non-Profit:** Non-Profit will procure and maintain at its own expense until all its obligations have been discharged, coverage with limits of liability not less than those stated below. Coverage must be placed with insurers having A.M. Best ratings of not less than A-VII, unless otherwise approved by the County.
- 17.1.1. Commercial General Liability (CGL) – Occurrence Form with limits not less than \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include coverage for liability arising from premises, operations, independent Non-Profits, personal injury, bodily injury, broad form contractual liability and products-completed operations. Any standard coverages excluded from the CGL policy, such as products/completed operations, etc. shall be covered by endorsement or separate policy and documented on the Certificates of Insurance.
 - 17.1.2. Business Automobile Liability – Coverage for bodily injury and property damage on any owned, leased, hired, and/or non-owned autos assigned to or used in the performance of this Agreement with minimum limits not less than \$1,000,000 Each Accident.
 - 17.1.3. Workers' Compensation and Employers' Liability – Statutory coverage for Workers' Compensation and Employers Liability coverage with limits of \$1,000,000 each accident and \$1,000,000 each employee – disease.
 - 17.1.4. Liquor Liability. For any events involving the consumption of alcohol, Liquor Liability insurance with minimum policy limits of at least \$2,000,000 per occurrence and \$4,000,000 general aggregate. Pima County will be named an additional insured to the Liquor Liability policy with the following additional insured language: "Pima County is an additional

insured with respect to liability arising out of the activities performed by, or on behalf of, the Non-Profit.”

- 17.1.5. 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 Agreement, and Non-Profit must maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.
- 17.1.6. Subrogation Endorsement: The General Liability, Business Automobile Liability, and Workers’ Compensation Policies shall each contain a waiver of subrogation endorsement in favor of Pima County, and its departments, districts, officials, agents, and employees for losses arising from work performed by or on behalf of the Non-Profit.
- 17.1.7. Primary Insurance Endorsement: The Required Insurance policies must state that they are primary and that any insurance carried by County, or its agents, officials, or employees, is excess and not contributory insurance.
- 17.1.8. The Required Insurance policies may not obligate County to pay any portion of Non-Profit’s deductible or Self Insurance Retention (SIR).
- 17.1.9. Subcontractors: Non-Profit must either (a) include all subcontractors as additional insureds under its required insurance policies, or (b) require each subcontractor to separately meet all Insurance Requirements and verify that each subcontractor has done so. If requested by County, Non-Profit must furnish appropriate insurance certificates for each subcontractor. Non-Profit must obtain County’s approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.
- 17.1.10. Notice of Cancellation: Non-Profit must notify County within two business days of Non-Profit’s receipt of notice from an insurer if any Required Insurance policy is suspended, voided, or cancelled for any reason. Notice must include the Pima County project or contract number and project description.
- 17.1.11. Verification of Coverage: Non-Profit must furnish County with a certificate of insurance (valid ACORD form or equivalent approved by Pima County) for each Required Insurance policy, which must specify that the policy has all the required endorsements, and must include the Pima County project or contract number and project description. Each certificate must be signed by an authorized representative of the insurer.

17.1.12. Non-Profit must provide the certificates to County before work commences. Each Required Insurance policy must be in effect at least 10 days before work under this Agreement commences. Non-Profit must provide County a renewal certificate not less than 15 days prior to a Required Insurance policy's expiration date. Failure to maintain the Required Insurance policies, or to provide evidence of renewal, is a material breach of this Agreement.

17.1.13. Approval and Modifications: The Pima County Risk Manager may modify these insurance requirements at any point during the Term of this Agreement. This can be done administratively and does not require a formal Agreement amendment. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, nor the County's receipt of any other information from the Non-Profit, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

18. Indemnification. To the fullest extent permitted by law, Non-Profit will defend, indemnify, and hold harmless Pima County and any related taxing district, and the officials and employees (collectively "County Indemnitee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Non-Profit or any of Non-Profit'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 Non-Profit to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The County Indemnitee will, in all instances, except for Claims arising from willful misconduct or solely from the acts or omissions of the County Indemnitee, be indemnified by Non-Profit from and against any and all Claims. Non-Profit is responsible for primary loss investigation, defense and judgment costs for any Claim to which Non-Profit's indemnity applies.

To the fullest extent permitted by law, County will defend, indemnify, and hold harmless Non-Profit and its officers, directors, managers, employees and agents of each of them (collectively "Non-Profit Indemnitee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of County or any of County's officials, employees agents, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of

the failure of County to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Non-Profit Indemnatee will, in all instances, except for Claims arising from willful misconduct or solely from the acts or omissions of the Non-Profit Indemnatee, be indemnified by County from and against any and all Claims. County is responsible for primary loss investigation, defense and judgment costs for any Claim to which County's indemnity applies.

These indemnities will survive the expiration or termination of this Agreement.

19. **Fund Raising Commitments by Non-Profit.** Non-Profit will begin fundraising efforts to obtain private and public contributions for the restoration of the Property upon the Commencement Date.

19.1. Non-Profit will apply and compete for State or Federal grant funds identified for historic preservation or cultural advancement of the Project. As the owner of the Property, County shall reasonably cooperate with Non-Profit's applications for grant funds and other fundraising efforts.

19.2. Pima County is to be notified within two business days of Non-Profit being notified of the award of any State or Federal grant funds applicable to this Project and any phase of the Project as the acceptance of such may cause changes to terms, language and administration of construction contracts.

19.3. The nature and extent of the Improvements that County will construct for the Project depends upon the funding that Non-Profit will provide to County hereunder. Except for the first half of County Commitment described in Section 20.1, County is not obligated to contribute additional funds to construct any Improvements until and unless Non-Profit has donated or caused to be donated a minimum of \$500,000 in cash donations to the Project. Non-Profit is expected to raise at least \$3,000,000 ("**Fundraising Target**") for the Project during the Term of this Agreement. The Fundraising Target is the amount expected to be required to complete the Project as envisioned by the Non-Profit and County and as shown on the Conceptual Plan and as the same may be amended. The County will collaborate with Non-Profit during the Design Phase and Construction Phase before the Fundraising Target is received. Non-Profit acknowledges that failure to raise the Fundraising Target could require substantial changes to the construction documents at additional costs. Such additional cost would be paid for from amounts provided by the Non-Profit, which may include grant and donor funds raised by Non-Profit. Non-Profit's payment of the additional cost for construction documents shall be Non-Profit's sole liability for the failure to meet the Fundraising Target and under no circumstances shall Non-Profit be required to pay any other amounts if the Fundraising Target is not met. Non-Profit acknowledges that County has certain statutory requirements, and can

only commit to contracts when funds are available. County expects this Project will be “phased”, to assure resources are available for each specific project phase.

- 19.4. Non-Profit to date has received certain donations for the Project and currently has approximately \$50,000 cash in existing donations and approximately \$400,000.00 in commitments. The existing donations will be credited to the Fundraising Target upon deposit into the Non-Profit’s Teatro Carmen Donation Account (the “**TC Donation Fund**”).
 - 19.5. Non-Profit will establish an account, referred to as the TC Donation Fund, for the purpose of holding their portion of the funds, donated or otherwise. The TC Donation Fund will be restricted solely for Project related expenses. Pima County will establish a new Unit within their accounting system to hold their portion of the funds and funds transferred from the TC Donation Fund (the “**County Commitment Fund**”). Both the TC Donation Fund and the County Commitment Fund will be distributed in accordance with a mutually agreed upon sources and uses document (“**Sources and Uses**”) to be reviewed and approved by the County Facilities Management Director authorized representative and a Non-Profit authorized representative no less than annually.
 - 19.6. All grant and donor funds (both from public or private sources) will be deposited into the TC Donation Fund. The Sources and Uses will determine which expenses be paid from TC Donation Fund or contracted by the County for payment from County Commitment Fund.
 - 19.7. Facilitation of Non-Profit Borrowing. Non-Profit may, if it deems appropriate, borrow funds to meet its obligations or otherwise facilitate Non-Profit’s activities. Any lien required to secure a loan will be placed solely upon Non-Profit’s interests created by this Agreement and/or pledges of contributions from donors. Non-Profit may not create a lien or encumbrance upon the Property.
 - 19.8. Non-Profit will provide County with detailed quarterly fundraising reports identifying all funds and in-kind donations (i.e., date, donor name, pledge, etc.) received, from whom the donation was made, and any conditions placed on the donation. Non-Profit will also provide County with detailed quarterly expense reports for TC Donation Fund (i.e., date, vendor, reason for purchase, etc.)
20. **Financial Commitments by County.** County will contribute funds, not to exceed \$1,000,000 (“**County Commitment**”) to the Project as follows:

- 20.1. Within 30 days of execution of this Joint Development Agreement, or as soon as reasonably practicable, County will deposit into the County Commitment Fund the first-half of the County Commitment (or \$500,000).
 - 20.2. When Non-Profit has transferred to the County Commitment Fund or obligated Project expenses from the TC Donation Fund, as outlined in the Sources and Uses document, the total aggregate amount of \$500,000 from other public or private sources and contributions which are available for use on the Project, the second-half of County's Commitment (or \$500,000) will be made available for Project costs and expenses from County Commitment Fund.
 - 20.3. County intends that City of Tucson will become an equal contributor to the Project, which is expected to benefit the entire community. Non-Profit will endeavor to obtain cash contributions from the City of Tucson equal to the County Commitment.
21. **Notices.** Any Notices 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.

TO NON-PROFIT: Stratford Art Works, Inc.
 308 East 2nd Street
 Tucson, Arizona 85705
 Attention: Herbert R. Stratford IV, President
 E-Mail: herbstratford@yahoo.com

TO COUNTY: Director, Pima County Facilities Management
 150 W. Congress, 3rd Floor
 Tucson, Arizona 85701
 Email: FM_Leasing_Services@pima.gov

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 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.

22. **Default/Termination.** This Agreement may be terminated by either party if a material breach or default remains uncured for a period of 30 days of Notice being provided to the breaching Party. If a longer period of time to cure is required to cure the default, the breaching Party must commence to cure within 30 days and thereafter diligently pursue such cure to completion.

23. **Authority of Non-Profit and County.** Each of the persons signing below represents and warrants that the signer has full power and authority to execute and deliver this Agreement on behalf of that Party and to bind such Party to the terms and conditions of this Agreement.
24. **Books and Records.** Non-Profit will keep and maintain proper and complete books, records, and accounts related to the Project, which will be open at all reasonable times for inspection and audit by authorized representatives of County. In addition, Non-Profit will retain all records relating to this Agreement for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.
25. **Non-Profit Status.** Non-Profit must maintain its status as a nonprofit corporation and shall, upon request, provide County copies of Non-Profit's articles of incorporation and bylaws, and any amendments thereto. Non-Profit may not assign its rights and obligations under this Agreement to another entity, either non-profit or for-profit, formed for the purpose of performing Non-Profit's obligations under this Agreement and under the Operating Agreement without the prior written consent of County, which the County may, at its reasonable discretion withhold.
26. **Audits.** Beginning with Non-Profit's 2022 fiscal year, and for each fiscal year of this Agreement thereafter, Non-Profit will provide County with a detailed source and use statement of expenses and revenues relating to the Project, prepared in accordance with generally accepted accounting principles and examined by an independent certified public accountant. The statement will be submitted to County within three (3) months of the close of the fiscal year. The County may, at any time by providing written notice to Non-Profit, inspect Non-Profit's books and records related to the Project or may have them audited by a third party. If any material discrepancies are found as a result of County's audit, Non-Profit will pay the cost of the third party audit.
27. **Compliance with ADA.** Non-Profit shall 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.
28. **Non-Discrimination in Employment.** Non-Profit shall not discriminate against any County employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out Non-Profit's duties pursuant to this Agreement. Non-Profit shall comply with the provisions of Arizona Executive Orders 75-5, as amended by Executive Order 2009-09, which are incorporated into this Agreement by reference as if set forth in full herein.

29. **Legal Arizona Workers Act Compliance.** If Non-Profit furnishes labor, time or effort to County under this Agreement within the State of Arizona, the following applies: Non-Profit warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the “State and Federal Immigration Laws”). Non-Profit will ensure that each subcontractor who performs any work for it under this Agreement likewise complies with the State and Federal Immigration Laws. A breach of this paragraph will be deemed a material breach of this Agreement that subjects Non-Profit to penalties up to and including termination of the Agreement. County retains the legal right to inspect the papers of any Non-Profit or subcontractor employee who works on the Agreement to ensure that the Non-Profit or subcontractor is complying with this warranty.

30. **Miscellaneous Provisions**

30.1. Conflict of Interest. This Agreement is subject to cancellation pursuant to Arizona Revised Statutes § 38-511 which is incorporated herein by reference.

30.2. Waiver. The waiver by County or Non-Profit of any term, covenant or condition herein shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein.

30.3. Prior Agreements, Amendments, and Modifications. This Agreement constitutes and contains the entire agreement between the Parties with respect to its subject matter and no prior or contemporaneous agreements or understanding pertaining to any such matters shall be effective for any purpose. This Agreement may not be amended except by an agreement in writing signed by the parties. This Agreement is not effective or binding on either Party until it is fully executed by authorized representatives of both Parties and filed by the Clerk of Pima County.

30.4. Partial Invalidity. If any portion of this Agreement is found by a court to be invalid, void, or illegal, no other portion of the Agreement will be affected, impaired or invalidated and all such other portions will remain in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid, void, or illegal provision.

30.5. Choice of Law and Venue. This Agreement shall be governed by the laws of the State of Arizona and the venue for any action arising out of this Agreement shall be the Pima County Superior Court.

30.6. Attorney’s Fees and Costs. In any action brought by a Party to enforce the obligations of any other Party, the prevailing Party is entitled to collect from the

opposing Party the prevailing Party's reasonable litigation costs and attorney's fees and expenses, including court costs, reasonable fees of accountants and experts, and other expenses necessary to the litigation in addition to all other relief, all of which will be set by a judge and not by a jury.

30.7. Counterparts. This Agreement may be executed in counterparts, each of which is effective as an original.

30.8. No Third Party Beneficiaries. No person or entity other than a Party has any rights under this Agreement.

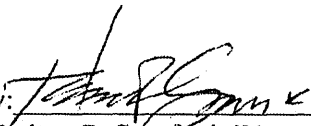
30.9. No Partnership. Nothing in this Agreement creates a partnership or joint venture between the Parties, and nothing in this Agreement authorizes any Party to act as agent for or representative of any other Party, except as expressly provided in this Agreement.

31. **Non-Appropriation.** Notwithstanding any other provision in this Agreement, County may terminate this Agreement 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 Agreement. In the event of such termination, County will have no further obligation to Non-Profit, other than to pay for services rendered prior to termination.

PIMA COUNTY, ARIZONA

STRATFORD ART WORKS, INC.


By: _____
Sharon Bronson
Chair, Board of Supervisors
Date: _____

By:  _____
Herbert R. Stratford, IV
President and Authorized Signer
Date: 12-2-21

ATTEST:

By: _____
Melissa Manriquez
Clerk of the Board

APPROVED AS TO CONTENT:

By:  _____
Lisa Josker, Director
Pima County Facilities Management
Date: 12/2/2021

APPROVED AS TO FORM:

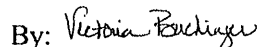
By:  _____
Victoria Buchinger
Deputy County Attorney
Date: December 2, 2021

Exhibit A



Exhibit B (1 of 4 pages)



POSTER
MIRTO
McDONALD
ARCHITECTURE
PLANNING
PRESERVATION

TEATRO CARMEN SUMMARY BUDGET:

October 13, 2021

(Preliminary estimate based on a field assessment by architects and engineers. It is based on schematic drawings in a volatile market. As such, actual costs may vary.)

PHASE 1:

RE-ROOF OF SOUTH BUILDING:

RE-ROOF: Ralph Hayes bid (with contingency & soft) \$ 30,000

PHASE 2:

PATIO/LAR: As drawn (from Wilder LAR, escalated, contingency & soft) \$ 275,000

PHASE 3:

GREY SHELL OF SOUTH (ELKS CLUB) BUILDING:

DEMOLITION Miscellaneous interior \$ 20,000

EXTERIOR Repairs and repointing existing brick and foundation \$ 20,000
Miscellaneous windows, doors, hardware @\$1000 ea.) \$ 14,000

INTERIOR: Rehab of shell for restaurant, bar, storage (@\$75/SF) \$ 150,450
Rehab of kitchen, bathrooms, dressing rooms (@\$200/SF) \$ 195,600

STRUCTURAL: Low volume south area: Roof \$ 20,000
Low volume south area: Repairs to south wall \$ 12,000
Low volume south area: Strap ties \$ 8,000

MECHANICAL: **Restaurant:** Estimated 10 ton cooling load, use (2) 5 ton rooftop packaged units located over the restaurant
Kitchen: Estimated 5 ton load, use 5 ton rooftop packaged unit located over the kitchen. + grease hood, grease exhaust fan and evap cooler make-up air unit.
Lobby: Estimated 4 ton unit, use 4 ton rooftop packaged unit located over the restaurant. \$ 125,000

PLUMBING: **Bathrooms:** As per plumbing fixtures are shown on arch plan.
Service: A 4" sewer line + a grease trap for kitchen similar \$ 80,000

SPRINKLERS **Service:** Fire sprinklers and a fire riser, located in riser room. \$ 14,000

ELECTRICAL: All of the interior ambient lighting will be LED light fixtures to comply with the allowed energy usage.
All of the controls will comply with the automatic shut-off
The exterior lighting will be full cut-off mounted on the building
A new electrical service will be based on all required loads
New receptacles will have to be designed to meet user needs
The restaurant / bar area will be required power by others
The air conditioning and plumbing equipment is new
Electrical service: likely 600 amps @ 120/208 volt, 3 ph, 4 wire
The theatrical lighting designed and specified by others \$ 75,000.

Sub-Total Phase 3 \$ 734,050

Plus 20% Escalation and Contingency \$ 146,810

TOTAL HARD COSTS PHASE 2 BUILDING \$ 880,860

Plus 22% P, OH, Bond, Insurance, Tax \$ 193,789

TOTAL ESTIMATED PHASE 3 PROJECT COST (W/O Restaurant T.I.) \$1,074,649

Exhibit B (2 of 4 pages)

PHASE 4:

REHAB OF TEATRO CARMEN BUILDING (Theater equipment excluded):

Architectural development of existing historic building is as shown on schematic design plans. All work will conform to HPZ & NRHP, and IBC for Existing Buildings.

<u>DEMOLITION</u>	Miscellaneous and roof structure.	\$ 22,000
<u>EXTERIOR</u>	Repairs to existing stucco	\$ 22,000
	Repairs and repointing existing brick and foundation	\$ 10,000
	4200 SF Standing Seam Metal roof, Teatro Carmen (@ \$13/SF)	\$ 58,551
	Miscellaneous windows, doors, hardware @\$1000 ea.)	\$ 14,000
<u>INTERIOR:</u>	Rehab of interior of Theater (@\$75/SF)	\$ 214,000
	Tin ceiling: remove, recondition, and reinstall	\$ 22,500
	Rehab of Lobby, Porch, Offices, Projection Room (@\$90/SF)	\$ 174,150
<u>STAGEHOUSE:</u>	New construction (@\$120/SF)	\$ 165,000
<u>STRUCTURAL:</u>	High volume auditorium: Roof (joists and decking)	\$ 84,000
	High volume auditorium: Brick repairs	\$ 15,000
<u>MECHANICAL:</u>	Teatro: Estimated 25 ton cooling load, (2) 12.5 ton rooftop packaged units located over the restaurant	
	Stage: Estimated 15 ton cooling load, use a 15 ton rooftop packaged unit over the stage.	
	Upper Floor: Estimated 3 ton cooling, 3 ton split heat pump.	\$ 175,000
<u>SPRINKLERS:</u>	Service: Fire sprinklers and a fire riser, located in riser room.	\$ 16,000
<u>ELECTRICAL:</u>	All of the interior ambient lighting will be LED light fixtures to comply with the allowed energy usage. All of the controls will comply with the automatic shut-off. A new electrical service will be based on all the required loads. New receptacles will be designed to meet user needs. air conditioning is new.	
	Electrical service: likely 600 amps @ 120/208 volt, 3 ph, 4 wire	
	The theatrical lighting designed and specified by others	
	Fire alarm system is required: not included in electrical budget	
	Telephone, communication, TV antenna systems	\$ 100,000
<u>TOTAL:</u>		\$1,092,201
	Plus 20% Contingency	\$ 218,440
	TOTAL HARD COSTS	\$1,310,641
	Plus 22% P, OH, Bond, Insurance, Tax	\$ 288,341
	TOTAL ESTIMATED PHASE 4 CONSTRUCTION COST (W/O T.I.)	\$1,598,892

PHASE 5:

REMAINING SITE WORK



<u>SITE UTILITIES:</u>	Site development; sidewalk, water, sewer, electrical, etc.	\$ 80,000
<u>SERVICE AREA:</u>	4982 SF Paving driveway, parking (@\$15/SF)	\$ 74,730
	TOTAL ESTIMATED PHASE 5 CONSTRUCTION COST (with contingency & soft)	\$ 154,730

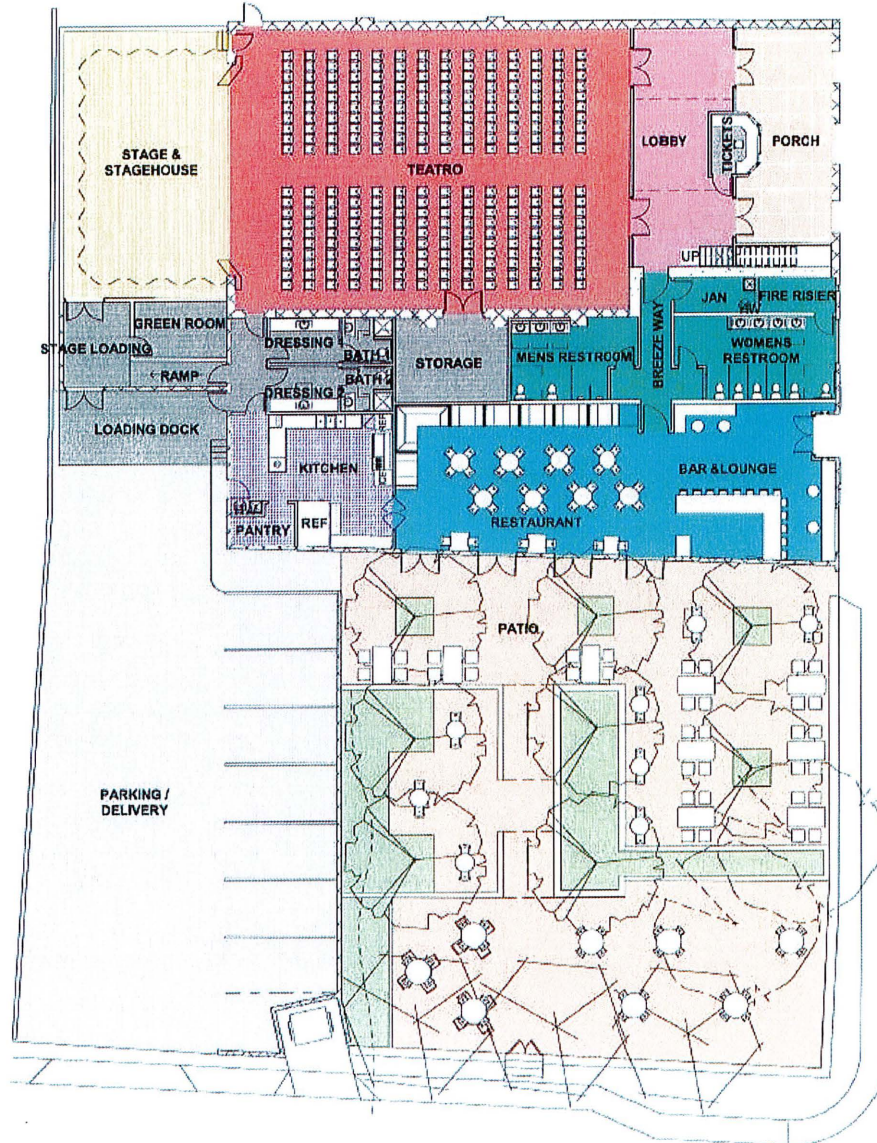
PHASE 6:	FF&E for theatrical/film systems (Lights, audio, projection, stage and stage drapes)	\$ 600,000
-----------------	--	------------

PHASE 1:	RE-ROOF OF SOUTH BUILDING:	\$ 30,000
PHASE 2:	PATIO/LAR:	\$ 275,000
PHASE 3:	GREY SHELL OF SOUTH BUILDING:	\$1,074,649
PHASE 4:	REHAB OF TEATRO CARMEN	\$1,598,892
PHASE 5:	REMAINING SITE WORK	\$ 154,730
PHASE 6:	FFE	\$ 600,000
	PROJECT TOTAL CONSTRUCTION	\$3,733,271
	A & E (excluding FFE) @ 7.8%	\$ 244,862

TEATRO CARMEN

LEGEND

	STAGE		RESTAURANT SUPPORT
	THEATER		RESTAURANT
	THEATER LOBBY		PARKINGS & DELIVERY
	THEATER SUPPORT		HARDSCAPE
	RESTROOM CORE		GREENSCAPE



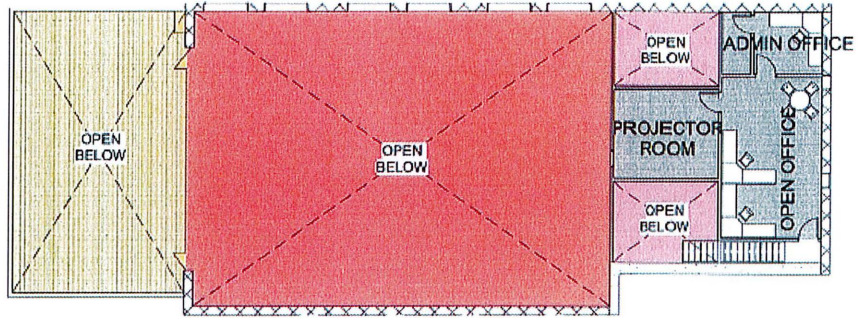
1 LEVEL 1 - COLOR CODE
SCALE: 1/16" = 1'-0"

Exhibit B (4 of 4 pages)

TEATRO CARMEN

LEGEND

- STAGE
- THEATER
- THEATER LOBBY
- THEATER SUPPORT



2 LEVEL 2 - COLOR CODE

SCALE: 1/16" = 1'-0"

ROOM SCHEDULE			
NUMBER	NAME	AREA	Department
101	PORCH	490 SF	HARDSCAPE
102	TICKETS	68 SF	THEATER SUPPORT
103	LOBBY	579 SF	THEATER LOBBY
104	KITCHEN	443 SF	RESTAURANT SUPPORT
106	RESTAURANT	1036 SF	RESTAURANT
107	TEATRO	2857 SF	THEATER
108	STAGE & STAGEHOUSE	1112 SF	STAGE
110	MENS RESTROOM	236 SF	RESTROOM CORE
112	STORAGE	230 SF	THEATER SUPPORT
113	EXIT CORRIDOR	85 SF	THEATER SUPPORT
114	GREEN ROOM	132 SF	THEATER SUPPORT
117	BREEZE WAY	173 SF	RESTROOM CORE
118	PROJECTOR ROOM	219 SF	THEATER SUPPORT
120	OPEN OFFICE	374 SF	THEATER SUPPORT
121	DRESSING 1	79 SF	THEATER SUPPORT
122	DRESSING 2	79 SF	THEATER SUPPORT
123	BATH 2	57 SF	THEATER SUPPORT
124	BATH 1	57 SF	THEATER SUPPORT
125	STAGE LOADING	143 SF	THEATER SUPPORT
126	WOMENS RESTROOM	315 SF	RESTROOM CORE
130	FIRE RISIER	68 SF	RESTROOM CORE
131	JAN	74 SF	RESTROOM CORE
132	BAR & LOUNGE	626 SF	RESTAURANT
134	ADMIN OFFICE	102 SF	THEATER SUPPORT
135	PANTRY	57 SF	RESTAURANT SUPPORT
136	REF	37 SF	RESTAURANT SUPPORT
137	RAMP	62 SF	THEATER SUPPORT
138	LOADING DOCK	320 SF	THEATER SUPPORT
140	PATIO	4851 SF	HARDSCAPE
141	PARKING / DELIVERY	4182 SF	PARKINGS & DELIVERY