



BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: July 25, 2023

or Procurement Director Award: ☐

** = Mandatory, information must be provided*

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

Arts Foundation for Tucson and Southern Arizona

***Project Title/Description:**

Public Art Program – Operational Support and Services

***Purpose:**

The program will ensure Pima County Public Art Program maintains equitable artist selection processes, sound stewardship of public funds, and secures future dynamic artworks representative of the communities and cultures in which they are created.

***Procurement Method:**

Non-procurement contract and not subject to Procurement rules, awarded per Board of Supervisor Policy E36.1.

***Program Goals/Predicted Outcomes:**

Goal: Advance artistic expression, civic participation, and equitable economic growth of our diverse communities.

Predicted Outcome: Build the artistic and professional capacities of culture bearers, artists and arts organizations in Pima County.

***Public Benefit:**

As the designated arts agency, the agency will make significant educational, financial and professional investments in Pima County and Southern Arizona in advancing artistic expression, civic participation, and equitable economic growth of our diverse communities.

***Metrics Available to Measure Performance:**

Quarterly reports will be submitted that include benchmarks from the approved work plan.

***Retroactive:**

Yes, after receiving signed agreement from agency, the next available BOS meeting date available is July 25, 2023.

TO: LOB 7-12-23 W
Vers: 3
pgs: 15

JUL 11 23 AM 10:00 P0

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: CR Contract Number (i.e., 15-123): 23-274
Commencement Date: 07/01/2023 Termination Date: 06/30/2025 Prior Contract Number (Synergen/CMS): _____
☒ Expense Amount \$ 250,000.00 * ☐ Revenue Amount: \$ _____

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

Funding from General Fund? ☒ Yes ☐ No If Yes \$ 250,000.00 % 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: Joel Gastelum/Ana Basurto

Department: CWD

Telephone: 4-6750/4-5673

Department Director Signature: DRK

Date: 06.30.23

Deputy County Administrator Signature: _____

Date: 10 July 2023

County Administrator Signature: _____

Date: 7/10/2023

PIMA COUNTY COMMUNITY & WORKFORCE DEVELOPMENT DEPARTMENT

PROGRAM: Public Art Program - Operational Support and Services

AGENCY: Arts Foundation for Tucson and Southern Arizona
525 North Bonita Avenue
Tucson, Arizona 85745

AMOUNT: \$250,000.00

CONTRACT NUMBER: CT-CR-23-274 (formerly CT-CPO-22-162)

FUNDING SOURCE: General Fund

CONTRACT TERM: July 1, 2023 – June 30, 2025

PROFESSIONAL SERVICES CONTRACT

This Agreement is entered into by and between Pima County ("County"), a body politic and corporate of the State of Arizona, and Arts Foundation for Tucson and Southern Arizona ("Contractor"), a non-profit corporation registered to do business in the State of Arizona.

1.0 AUTHORITY, BACKGROUND AND PURPOSE.

1.1 Authority. County is authorized by A.R.S. §§ 11-262 to appropriate funds from the General Fund to support an arts support fund. County selected contractor pursuant to Pima County Board of Supervisor's Policy C3.3 and Administrative Procedure 3-16.

1.3 Background. On July 6, 2021, the Board of Supervisors ("BOS") allocated \$125,000.00 in General Funds for support and facilitation of operational support and services of Contractor to fulfill its mission of Arts & Artist support within Pima County. Effective July 1, 2021, County and Contractor entered into contract no. CT-CPO-22-162, which provided for a one-year term with four extension options.

The allocation was initially provided to the Capital Program Office, who, alongside the Pima County Public Art Program, administered and managed the previous iteration of this Contract in FY22. County determined that Community Workforce and Development was better able to meet the requirements of Contractor's program mission, necessitating a new Contract, as opposed to exercising an extension option under the prior contract.

1.4 Purpose. Through grants, public art, promotion, advocacy, economic workforce opportunities and professional development, the Arts Foundation performs an important leadership role that builds the artistic and professional capacities of culture bearers, artists and arts organizations in Pima County.

2.0 TERM AND EXTENSIONS.

2.1 Term. This Agreement commences on July 1, 2023 (Commencement Date) and will terminate on June 30, 2025 ("Initial Term"). "Term," when used in this Agreement, means the Initial Term plus any exercised extension options under paragraph 2.2. If the Commencement Date of the Initial Term is before the date of execution, the parties will, for all purposes, deem the contract to have been in effect as of the Commencement Date.

2.2 Extension Option. The Parties may, by mutual agreement, renew this Contract for up to three (3), additional one-year period or any portion thereof (the "Extension Option"). The Extension Option will be effective only upon execution by the Parties of a formal written amendment.

3.0 SCOPE OF SERVICES.

- 3.1.1 Provide the County with the services described in the attached **Exhibit A** (1 page) and **Exhibit B** (1 page).
- 3.1.2 Provide services every month of the contract year unless County provides written approval for a different delivery schedule.
- 3.1.3 Obtain and maintain all applicable licenses, permits and authority required for its performance under this Agreement.
- 3.2 COVID-19 Restrictions.
 - 3.2.1 All in person and group program services must be provided in compliance with Centers for Disease Control and Prevention ("CDC"), State and County guidelines for operating during the Coronavirus COVID-19 pandemic.
 - 3.2.2 If Contractor's performance of the services, as set forth in this Agreement, must be modified or curtailed to comply with public health restrictions related to COVID-19, Contractor must immediately report the situation to County. County and Contractor will confer at least monthly to determine appropriate performance requirements and activities until services can be resumed in full.
- 3.3 Confidentiality.
 - 3.3.1 Contractor understands and acknowledges that any client and applicant files and information collected pursuant to the terms of this Agreement are private and the use or disclosure of such information, when not directly connected with the administration of Contractor's or County's responsibilities with respect to the services provided under this Agreement, is prohibited, unless written consent is obtained from the individual or, in the case of a minor, from the responsible parent or guardian of the minor.
 - 3.3.2 Contractor will allow only persons properly authorized and with a need for the information to have access to these files.
 - 3.3.3 Contractor will observe and abide by all applicable State and Federal statutes and regulations regarding use or disclosure of private information including, but not limited to, information concerning applicants for and recipients of Program services.
- 3.4 Monitoring.
 - 3.4.1 County will monitor all of Contractor's management, fiscal and service provision activities relating to performance of duties and obligations under this Agreement to ensure that Contractor is:
 - 3.4.1.1 Making adequate and acceptable progress in the provision of services;
 - 3.4.1.2 Maintaining adequate and acceptable systems to document services and expenditures; and
 - 3.4.1.3 Using the funds provided pursuant to this Agreement effectively and efficiently to accomplish the purposes for which funds were made available.
 - 3.4.2 Contractor will cooperate with County in the monitoring and evaluation process.
 - 3.4.3 Contractor will provide County with access to all documentation required to evaluate Contractor's performance and use of funds under this Agreement.
- 3.5 County may:
 - 3.5.1 Provide technical assistance to Contractor when needed; and
 - 3.5.2 In its sole discretion, direct Contractor to focus services to specific populations, areas or projects that County determines is the most appropriate and advantageous to the residents of Pima County.

4.0 COMPENSATION AND PAYMENT.

4.0 COMPENSATION AND PAYMENT.

- 4.1 This is a cost reimbursement contract. In consideration for the provision of Program services as set forth in this Agreement, County agrees to pay in an amount not-to-exceed \$250,000.00 ("the maximum allocated amount").
- 4.2 Payments will be made from Pima County General Funds only. The following conditions apply:
 - 4.2.1 Contractor may not submit requests for payment prior to the execution of this Agreement.
 - 4.2.2 Payment will only be made for services provided between the Commencement Date and the termination date set forth in paragraph 2.1.
 - 4.2.3 Payment will only be made for activities as delineated in the budget set forth in the budgets for each Program.
- 4.3 Contractor must submit a request for payment every month, even if no funds are being requested for the prior month. Requests for payment are due as follows:
 - 4.3.1 No later than the 15th day of each month for the previous month, or on a quarterly basis submitted by the 10th day of the following month after the end of each quarter, unless a different billing period is set forth and approved by the Director of Community & Workforce Development ("CWD") or designee.
 - 4.3.2 Final payment must be submitted to the County by July 7.
- 4.4 Invoice (requests for payment) must:
 - 4.4.1 Reference this contract (CT) number.
 - 4.4.2 Be submitted on the Invoice form provided by the County.
 - 4.4.3 Be approved and signed by an authorized representative of the Contractor.
 - 4.4.4 Be accompanied by documentation which must include, but is not limited to:
 - 4.4.4.1 A summary report of monthly expenditures for each Program by expense categories as shown in approved Program budgets in this Agreement.
 - 4.4.4.2 Copies of invoices and checks to support all purchases of goods or services.
 - 4.4.4.3 If reimbursement is authorized for travel, detailed travel reports to support all travel expenses.
 - 4.4.4.4 Any other documentation or policies requested by County.
 - 4.4.5 When funds are requested to pay the costs of personnel, Contractor must provide:
 - 4.4.5.1 Time sheets or other records, signed by the employee and the employee's immediate supervisor with direct knowledge of employee's efforts for this Agreement, that account for one hundred percent (100%) of the employee's time worked in the period. These documents must specify:
 - 4.4.5.1.1. Hours worked on this Agreement;
 - 4.4.5.1.2. Total hours worked per pay period;
 - 4.4.5.1.3. Days worked; and
 - 4.4.5.1.4. Hours worked each day.
 - 4.4.5.2 Accounting system report(s) specifying rate of pay and costs of employer paid benefits.
- 4.5 Contractor may not bill the County for costs which are paid by another fund source(s). Contractor must allocate expenses between other fund sources, as allowable. Contractor must notify County within ten (10) days of receipt of alternative funding for costs, which would otherwise be subject to payment pursuant to this Agreement.

- 4.6 If each request for payment includes adequate and accurate documentation, County will generally pay Contractor within thirty (30) days from the date the request is received. Contractor should budget cash needs accordingly.
- 4.7 County may, at its sole discretion:
- 4.7.1 Determine the acceptability and progress of work performed and determine the resulting entitlement to payment of each request for payment.
 - 4.7.2 Liquidate funds available under this Agreement for costs incurred by County on behalf of Contractor.
 - 4.7.3 Deny full payment for requests for reimbursement that are submitted to County after the dates set forth in paragraph 4.3. County may deduct its processing costs or delay-related damages in connection with a request for payment submitted after that date.
- 4.8 Pursuant to A.R.S. § 11-622, County will deny reimbursement completely for requests for payment made later than six (6) months after the last item of the account accrues.
- 4.9 No payments will be made to Contractor, until all of the following conditions are met:
- 4.9.1 Contractor has completed and submitted a W-9 Taxpayer Identification Number form;
 - 4.9.2 Contractor has registered as a Pima County Vendor at the following web address -- <https://vendors.pima.gov/webapp/VSSPROD1/AltSelfService>;
 - 4.9.3 This Agreement is fully executed; and
 - 4.9.4 Adequate and accurate documentation is provided with each request for payment or invoice.
- 4.10 Budget Modifications. Changes between budget line items of no more than 15% may be granted by and at the sole discretion of the Director or designee of the Department of Community & Workforce Development (CWD) (or its successor department). The following provisions apply:
- 4.10.1 The change may not increase or decrease the maximum allocated amount.
 - 4.10.2 Contractor must submit a written request for the line item change(s) on or before May 15 of the contract year and provide a detailed explanation as requested by the County.
 - 4.10.3 The change must be for future expenditures that are not part of the current existing and approved budget(s). The change may not be to cover unbudgeted expenditures incurred by Contractor prior to approval of the written request for a budget line item change.
 - 4.10.4 If the Director of CWD or designee approves the request for the budget line item change, the change will not be effective, nor will compensation under the change be provided, until the date set forth in the written approval.
- 4.11 Any change that increases or decreases the maximum allocated amount or that changes the Scope of Work in any way will require a contract amendment. Such change will not be effective, nor will compensation under the change be provided, until the contract amendment is fully executed by both parties.
- 4.12 Goods and services provided in excess of the budgeted line item or the maximum allocated amount without prior authorization as set forth in paragraphs 4.10 and 4.11 above will be at Contractor's own risk.
- 4.13 For the period of record retention required under Section 20.0 -- Books and Records, County reserves the right to question any payment made under this Section 4.0 and to require reimbursement by setoff or otherwise for payments determined to be improper or contrary to the Agreement or law. Contractor must reimburse County for improper, unallowable or unsubstantiated costs discovered as a result of audit or otherwise within thirty (30) days following demand for reimbursement by County.
- 4.14 Contractor must:

- 4.14.1 Have an accounting manual that describes its financial procedures in sufficient detail to allow reasonable understanding of Contractor's financial practices.
- 4.14.2 Develop and adhere to a written cost allocation plan for services to be provided under this Agreement.

4.15 Reduction in allocation.

- 4.15.1 Notwithstanding any other provision of this Agreement, County, at its sole option, may reduce the maximum allocated amount upon the occurrence of any of the following:
 - 4.15.1.1 Contractor is underperforming, including failure to provide services every month of the contract year without prior written approval of County;
 - 4.15.1.2 The amount of monies the State of Arizona distributes to Pima County's General Fund pursuant to A.R.S. § 42-5029 ("distributed revenues") is less than the amount anticipated in Pima County's then current fiscal year budget ("budgeted revenues"); or
 - 4.15.1.3 The State of Arizona's financial obligations are transferred to and become an expenditure obligation of Pima County in an amount greater than the amount anticipated in Pima County's applicable annual budget.
- 4.15.2 County will notify Contractor in writing of any reduction in allocated amount. The reduction in allocation and associated services will be effective on the date stated in the written notice and will not require a contract amendment.

5.0 AUDIT REQUIREMENTS.

5.1 Contractor will:

- 5.1.1 Establish and maintain a separate and identifiable account of all funds provided by County pursuant to this Agreement.
- 5.1.2 Provide financial statement audits as required by law.
- 5.1.3 Upon written notice from County, provide a program-specific financial statement. Notice will specify the period to be covered by the statement and the deadline for completion and submission of the statement.
- 5.1.4 Ensure that any audit conducted pursuant to this Agreement is performed by an independent certified public accountant and submitted to County within six (6) months of completion of Contractor's fiscal year, unless a different time is specified by County. The audit submitted must include Contractor's responses, if any, to audit findings.
- 5.1.5 Pay all costs for any audit required or requested pursuant to this Section 5.0, unless the cost was specifically included in the budget(s) set forth in this Agreement.
- 5.1.6 Timely submit the required or requested audit(s) to:

Risé Hart Community & Workforce Development 2797 E. Ajo Way, 3rd Floor Tucson, AZ 85713

- 5.1.7 If Contractor is a "nonprofit corporation" that meets the definition of "corporation" in A.R.S. §10-3140, Contractor will comply with the applicable audit requirements set forth in A.R.S. § 11-624, "Audit of Non-Profit Corporations Receiving County Monies."

6.0 INSURANCE.

- 6.1 Contractor will procure and maintain at its own expense insurance policies (the "Required Insurance") satisfying the below requirements (the "Insurance Requirements") until all of its

obligations under this Agreement have been met. The below Insurance Requirements are minimum requirements for this Agreement and in no way limit Contractor's indemnity obligations under this Agreement. The County in no way warrants that the required insurance is sufficient to protect the Contractor for liabilities that may arise from or relate to this Agreement. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.

6.2 Insurance Coverages and Limits:

- 6.2.1 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 cover for liability arising from premises, operations, independent contractors, personal injury, bodily injury, broad form contractual liability and products-completed operations.
- 6.2.2 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 Contract with minimum limits not less than \$1,000,000 Each Accident.
- 6.2.3 Worker's Compensation ("WC") and Employers' Liability: Statutory coverage for Workers' Compensation. Workers' Compensation statutory coverage is compulsory for employers of one or more employees. Employers Liability coverage with limits of \$1,000,000 each accident and \$1,000,000 each employee – disease.
- 6.2.4 Professional Liability (E & O) Insurance – This insurance is required for work from professionals whose coverage is excluded from the above CGL policy. The policy limits shall be not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate. The insurance shall cover professional misconduct or negligent acts of anyone performing any services under this Agreement.

6.3 Additional Insurance Requirements: The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- 6.3.1 Claims Made Coverage: If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the Commencement Date of this Agreement, and Contractor must maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.
- 6.3.2 Additional Insured: The General Liability and Business Automobile Liability policies must be endorsed to include Pima County, its departments, and all its related special districts, elected officials, officers, agents, employees and volunteers (collectively "County and its Agents") as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor. The full policy limits and scope of protection must apply to the County and its Agents as an additional insured, even if they exceed the Insurance Requirements.
- 6.3.3 Waiver of Subrogation: Commercial General Liability, Business Automobile Liability and Workers Compensation policies must 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 Contractor.
- 6.3.4 Primary Insurance: The Required Insurance policies, with respect to any claims related to this Agreement, must be primary and must treat any insurance carried by County as excess and not contributory insurance. The Required Insurance policies may not obligate the County to pay any portion of a Contractor's deductible or Self Insurance Retention (SIR). Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.
- 6.3.5 Insurer Financial Ratings: Coverage must be placed with insurers acceptable to the County with A.M. Best rating of not less than A- VII, unless otherwise approved by the County.

- 6.3.6 **Subcontractors**: Contractor 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, Contractor must furnish, if requested by County, appropriate insurance certificates for each subcontractor. Contractor must obtain County's approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.
- 6.4 **Notice of Cancellation**: For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to Pima County, within two (2) business days of receipt of notice, if a policy is suspended, voided, or cancelled for any reason. Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to the Pima County Contracting Representative. Notice shall include the Pima County project or contract number and project description.
- 6.5 **Verification of Coverage**:
- 6.5.1 Contractor will furnish Pima County with certificates of insurance (valid ACORD form or equivalent approved by Pima County) as required by this Agreement. An authorized representative of the insurer shall sign the certificates.
- 6.5.2 Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation waiver endorsements for the County and its Agents. All certificates and endorsements, as required by this written agreement, are to be received and approved by Pima County before work commences. Each insurance policy required by this Contract must be in effect ten (10) days prior to work under this Agreement. Contractor must provide County a renewal certificate not less than 15 days prior to a Required Insurance policy's expiration date. Failure to maintain the insurance coverages or policies as required by this Agreement, or to provide evidence of renewal, is a material breach of this Agreement.
- 6.5.3 All certificates required by this Contract will be sent directly to the appropriate County Department. The Certificate of Insurance shall include the Pima County project or contract number and project description on the certificate. Pima County reserves the right to require complete copies of all insurance policies required by this Contract at any time.
- 6.6 **Approval and Modifications**: The Pima County Risk Manager may modify the Insurance Requirements at any point during the Term of this Contract. This can be done administratively, with written notice from the Risk Manager and does not require a formal Contract 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 Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

7.0 INDEMNIFICATION.

To the fullest extent permitted by law, Contractor will defend, indemnify and hold harmless Pima County, and any related taxing district, and the officials and employees and each of them (collectively, "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 Contractor or any of Contractor's directors, officers, agents, employees, volunteers, or subcontractors, but only to the extent that the injury was caused by Contractor or 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. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. Contractor is

responsible for primary loss investigation, defense and judgment costs for any claim to which indemnity applies. This indemnity will survive the expiration or termination of this Agreement.

8.0 LAWS AND REGULATIONS.

- 8.1 Compliance with Laws; Changes. Contractor will comply with all applicable federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. Any changes in the governing laws, rules, and regulations during the terms of this Agreement will apply, but do not require an amendment.
- 8.2 Licensing. Contractor warrants that it is appropriately licensed to provide the services under this Agreement and that its subcontractors will be appropriately licensed.
- 8.3 Choice of Law; Venue. The laws and regulations of the State of Arizona will govern the rights of the parties, the performance of this Agreement, and any disputes hereunder. Any action relating to this Agreement must be brought in a court of the State of Arizona in Pima County.

9.0 NON-DISCRIMINATION.

Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Agreement, including flow down of all provisions and requirements to any subcontractors. During the performance of this Agreement, 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.

10.0 AMERICANS WITH DISABILITIES ACT.

Contractor will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§12101-12213) and the federal regulations for Title II (28 C.F.R. Part 35).

11.0 INDEPENDENT CONTRACTOR.

- 11.1 Contractor is an independent contractor. Neither Contractor nor any of Contractor's officers, agents, or employees will be considered an employee of Pima County or be entitled to receive any employment-related benefits, or assert any protections, under the Pima County Merit System.
- 11.2 Contractor is responsible for paying all federal, state and local taxes on the compensation received by Contractor under this Agreement 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.
- 11.3 Contractor will be solely responsible for its program development, operation, and performance.

12.0 SUBCONTRACTORS.

- 12.1 Except as provided in paragraph 12.2, Contractor will not enter into any subcontracts for any services to be performed under this Agreement without County's prior written approval of the subcontract. Contractor must follow all applicable Federal, State, and County rules and regulations for obtaining subcontractor services.
- 12.2 Prior written approval is not required for the purchase of supplies that are necessary and incidental to Contractor's performance under this Agreement.
- 12.3 Contractor will be 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 will create 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.

13.0 ASSIGNMENT.

Contractor will not assign its rights to this Agreement in whole or in part, without prior written approval

of the County. County may withhold approval at its sole discretion.

14.0 AUTHORITY TO CONTRACT.

Contractor warrants its right and power to enter into this Agreement. If any court or administrative agency determines that County does not have authority to enter into this Agreement, County will not be liable to Contractor or any third party by reason of such determination or by reason of this Agreement.

15.0 FULL AND COMPLETE PERFORMANCE.

The failure of either party to insist on one or more instances upon the other party's complete and satisfactory performance of this Agreement or to take any action based on the other party's failure to completely and satisfactorily perform, is not a waiver of that party's right to insist upon complete and satisfactory performance, or compliance with any other covenant or condition in this Agreement, 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 will not be construed as an accord and satisfaction.

16.0 CANCELLATION FOR CONFLICT OF INTEREST.

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

17.0 TERMINATION.

- 17.1 Without Cause: County may terminate this Agreement at any time, without cause, by notifying Contractor, in writing, at least thirty (30) days before the effective date of the termination. In the event of such termination, the County's only obligation to Contractor will be payment for services rendered prior to the date of termination.
- 17.2 With Cause: County may terminate this Agreement at any time without advance notice and without further obligation to County finds Contractor to be in default of any provision of this Agreement.
- 17.3 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 Contractor, other than for services rendered prior to termination.
- 17.4 Suspension: County reserves the right to suspend Contractor's performance and payments under this Agreement immediately upon notice delivered to Contractor's designated agent in order to investigate Contractor's activities and compliance with this Agreement. In the event of an investigation by County, Contractor will cooperate fully and provide all requested information and documentation. At the conclusion of the investigation, or within forty-five (45) days, whichever is sooner, Contractor will be notified in writing that the contract will be immediately terminated or that performance may be resumed.

18.0 NOTICE.

- 18.1 Contractor must give written notice of any change of corporate or entity status as promptly as possible and, in any event, within fifteen (15) days after the change is effective. A change in corporate or entity status includes, but is not limited to, change from unincorporated to incorporated status and vice versa and any suspension or termination of corporate status based on failure to comply with all applicable federal, state, and local reporting requirements.
- 18.2 Any notice required or permitted to be given under this Agreement must be in writing and must be served by delivery or by certified mail upon the other party as follows:

County:	Contractor:
Daniel Sullivan, Director Community & Workforce Development Dept. 2797 East Ajo Way Tucson, Arizona 85713	Adriana Gallego, Executive Director Arts Foundation for Tucson and Southern AZ 525 North Bonita Avenue Tucson, Arizona 85745

19.0 OTHER DOCUMENTS.

- 19.1 In entering into this Agreement, Contractor and County have relied upon information provided in Contractor's request for general funds to support the implementation of Contractor's Program and any other information and documents submitted to County to obtain such funds.
- 19.2 The documents set forth in Paragraph 19.1 are hereby incorporated into and made a part of this Agreement as if set forth in full herein, to the extent not inconsistent with the provisions of this Agreement, including all exhibits. Contractor will promptly bring any provisions which Contractor believes are inconsistent to County's attention, and County will provide Contractor with its interpretation of the provisions in question.

20.0 BOOKS AND RECORDS.

- 20.1 Contractor will keep and maintain proper and complete books, records and accounts, which must be open at all reasonable times for inspection and audit by duly authorized representatives of County.
- 20.2 In addition, Contractor will retain all records relating to this Agreement at least five (5) years after its termination or cancellation or until any related pending proceeding or litigation has been closed, whichever date is later.

21.0 COPYRIGHT.

Neither Contractor nor its officers, agents or employees will copyright any materials or products developed through contract services provided or contract expenditures made under this Agreement without prior written approval by the County. Upon approval, the County will have a non-exclusive and irrevocable license to reproduce, publish or otherwise use or authorize the use of any copyrighted material.

22.0 PUBLIC RECORDS.

- 22.1 Disclosure. Pursuant to Arizona Public Records law, 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 documents submitted in response to the solicitation resulting in an award of this Agreement, including, but not limited to pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.
- 22.2 Records Marked Confidential; Notice and Protective Order.
- 22.2.1 If Contractor reasonably believes that some of the records described in paragraph 22.1 above contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL."
- 22.2.2 In the event that a public records request is submitted to County for records marked "CONFIDENTIAL," County will notify Contractor of the request as soon as reasonably possible.
- 22.2.3 County will release the records ten (10) business days after the date of notice provided pursuant to paragraph 22.2.2, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records.

22.2.4 County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

23.0 LEGAL ARIZONA WORKERS ACT COMPLIANCE.

- 23.1 Compliance with Immigration Laws. Contractor hereby warrants that it will at all times during the term of this Agreement 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 Agreement likewise complies with the State and Federal Immigration Laws.
- 23.2 Books and Records. 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.
- 23.3 Remedies for Breach of Warranty. 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 23.0, is a material breach of this Agreement subjecting Contractor to penalties up to and including suspension or termination of this Agreement. 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. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Contractor.
- 23.4 Subcontractors. Contractor will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section 23.0 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 will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

24.0 REMEDIES.

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

25.0 SEVERABILITY.

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

26.0 NON-EXCLUSIVE AGREEMENT.

Contractor understands that this Agreement is nonexclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason.

27.0 CHILD LABOR.

Contractor will comply with all child labor laws, including, but not limited to A.R.S. § 23-230 *et seq.* the applicable provisions of which are hereby incorporated as provisions of this Agreement.

28.0 FINGERPRINTING.

Contractor will comply with applicable provisions of A.R.S. §§ 8-804, 36-594.01, 36-3008, 41-1964, and 46-141, which are hereby incorporated as provisions of this Agreement.

29.0 ELIGIBILITY FOR PUBLIC BENEFITS.

Contractor will comply with applicable provisions of A.R.S. §§1-501 and 1-502 regarding public benefits, which are hereby incorporated as provisions of this Agreement.

30.0 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.

31.0 FORCED LABOR OF ETHNIC UYGHURS.

Pursuant to A.R.S. § 35-394, if Contractor engages in for-profit activity and has 10 or more employees, Contractor certifies it is not currently using, and agrees for the duration of this Contract to not use (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Contractor becomes aware during the term of the Contract that the Company is not in compliance with A.R.S. § 35-394, Contractor must notify the County within five business days and provide a written certification to County regarding compliance within one hundred eighty days.

32.0 AMENDMENT.

The parties may modify, amend, alter or extend this Agreement only by a written amendment signed by the parties, unless otherwise set forth above. County must approve any amendment to the Agreement before any services commence under the amendment.

33.0 ENTIRE AGREEMENT.

This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written.

SIGNATURE PAGE TO FOLLOW

PIMA COUNTY

Chair, Board of Supervisors

DATE: _____

ATTEST:

Clerk of the Board


DATE: _____

APPROVED AS TO CONTENT:




Director or designee
Department of Community & Workforce
Development

APPROVED AS TO FORM:



Kyle Johnson, Deputy County Attorney

CONTRACTOR



Authorized Signature

Adriana Gallego, Executive Director

Printed Name and Title

DATE: May 30, 2023

EXHIBIT A (1 page)

SCOPE OF SERVICES

Arts and Culture Program - Operational Support and Services ("the Program")

1. PROGRAM TITLE

Arts and Culture Operational Support and Services

2. PROGRAM PURPOSE

The Arts Foundation is the designated local arts agency that makes significant educational, financial and professional investments in Pima County and Southern Arizona with a mission to advance artistic expression, civic participation, and equitable economic growth of our diverse communities. Through grants, public art, promotion, advocacy, economic workforce opportunities and professional development, the Contractor builds the artistic and professional capacities of culture bearers, artists and arts organizations.

3. PROGRAM ACTIVITIES Contractor will:

- 3.1. Provide and coordinate services as outlined in the Work Plan with CWD staff (Exhibit B);
- 3.2. Maintain professional staff and contractors in the implementation of this Agreement;
- 3.3. Obtain and maintain all applicable licenses, permits and authority required for its performance under this Agreement;
- 3.4. Employ suitably trained and skilled professional personnel to perform all services under this Agreement. Prior to changing any key personnel, especially those key Personnel County relied upon in making this Agreement, Contractor must obtain the approval of County;
- 3.5. Notify County of any changes to any of the following positions: chief executive officer, financial officer, program director or any other County liaison.
- 3.6. Perform its duties in a humane and respectful manner and in accordance with any applicable professional standards.
- 3.7. Provide Annual Work Plan, Quarterly Report and Annual Reports.

4. BUDGET

Budget Description	Budget
Program Personnel	\$52,000.00
Professional Services	\$131,000.00
Operating Costs	\$42,000.00
Indirect Costs	\$25,000.00
Total	\$250,000.00

EXHIBIT B (1 page)

Description	Goals
Economic Development	
Support for Artists, Organizations and Collectives Contribute to a strong, diversified economy by organizing an open, equitable, and informed process to provide program support and workforce opportunities for individual artists and artist collectives and arts and cultural organizations.	Support programs and projects through a peer review process.
Pima County Youth Arts Scholarship Contribute to lifelong learning by supporting enrollment at Pima Community College or Tohono O'odham Community College. Identify and reward high school seniors within Pima County who demonstrate excellence any artistic discipline.	Support up to 5 scholarships through a peer review process.
Communications Manage Arts Foundation's website and digital presence as a hub for arts-based resources of interest to artists and arts organizations and the public. Promote the Pima County arts community and convey information about grantmaking, public art, professional development, and other arts-related services and opportunities through the website, social media and monthly eNewsletters.	Launch brand new interactive website with Arts Directory. Feature Pima County artists, organizations and artworks in multiple digital platforms.
Workforce Development	
Public Art & Community Design Facilitate the Public Art and Community Design Committee; manage active public art projects, and route requests for maintenance, donations, relocations and deaccessions as needed; manage the Public Art Artist Roster and Public Art Map.	Facilitate PACD committee in accordance with Boards and Commissions. Maintain accurate and contemporaneous documentation for progress made in active public art projects. Launch new interactive Artist Roster directory and Public Art Map online.
Open Studio Tours (OST) Hybrid in-person and digital self-guided marketplace of artist studios and creative workspaces in the region. Visitors and collectors can engage directly with regional working artists to learn more about the artistic processes and have an opportunity to buy directly from the artist.	Engage new artists and new artistic disciplines. Maintain retention rate for previous participating artists. Provide professional development tools and resources. Provide networking opportunity for artists.
Professional Development Develop bilingual professional development opportunities and consultations for organizations, collectives, artists, culture bearers and Arts Foundation staff and Board.	Integrate professional development opportunities throughout all our programs by way of individualized consultations, technical assistance and webinars and presentations.

Work Plan