



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

Award  Contract  Grant

Requested Board Meeting Date: June 19, 2018 Addendum

\* = Mandatory, information must be provided

or Procurement Director Award

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

International Sonoran Desert Alliance

**\*Project Title/Description:**

Historic Ajo Plaza Restaurant Rehabilitation

**\*Purpose:**

The purpose of this project is to rehabilitate the former restaurant space located in the South Plaza Building of the Historic Ajo Plaza, constructed in 1916. The former restaurant (Copper Kettle) operated in the South Plaza through fall of 2011, and this area has sat vacant since that time. In order to attract a new restaurant business, the former restaurant space must be updated to provide a safe, sanitary and efficient facility that meets current code requirements and will provide an attractive and comfortable dining area. Once renovated, the restaurant (5,200 SF) will be able to be leased, creating new jobs for local residents. The updated restaurant will enhance the Historic Ajo Plaza by redeveloping the former restaurant space, which has sat vacant for the last seven years in a state of deterioration.

**\*Procurement Method:**

Pima County Solicitation CDNC 01-04-18 NSP1 issued 01/04/18; applications due 02/09/18; selection announced 3/9/18.

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

The International Sonoran Desert Alliance will be the project developer and has been formally designated as "Developer" under the NSP1 guidelines. As part of an overall revitalization plan for Ajo, this project will redevelop a vacant commercial space (the former Copper Kettle Restaurant) in order to attract a new food service enterprise that will lease the renovated restaurant space, creating local, full-time and part-time jobs opportunities.

**\*Public Benefit:**

Specifically, the project benefits the overall Historic Ajo Plaza by renovating an existing vacant commercial space. Generally, this project supports Ajo's economic development by redeveloping vacant commercial space and creating vital employment opportunities for the Ajo residents.

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

Execution of a restaurant/food service lease, as well as creation of new part-time and full-time employment opportunities.

**\*Retroactive:**

No.

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TO: COB- 6-14-18  
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pgs - 26  
(1)  
Addendum

**Contract / Award Information**

Document Type: CT Department Code: CD Contract Number (i.e.,15-123): 18-0411

Effective Date: 06/19/2018 Termination Date: 6-19-19 Prior Contract Number (Synergen/CMS): \_\_\_\_\_

Expense Amount: \$\* \_\_\_\_\_ <sup>HL</sup>  Revenue Amount: \$ \$100,000.00

\*Funding Source(s) required: U.S. Dept. of HUD Neighborhood Stabilization Program 1

Funding from General Fund?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

Contract is fully or partially funded with Federal Funds?  Yes  No

\*Is the Contract to a vendor or subrecipient? No. They are a Developer.

Were insurance or indemnity clauses modified?  Yes  No

*If Yes, attach Risk's approval*

Vendor is using a Social Security Number?  Yes  No

*If Yes, attach the required form per Administrative Procedure 22-73.*

**Amendment / Revised Award Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e.,15-123): \_\_\_\_\_

Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_

Effective Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_

Prior Contract No. (Synergen/CMS): \_\_\_\_\_

Expense or  Revenue  Increase  Decrease Amount This Amendment: \$ \_\_\_\_\_

Is there revenue included?  Yes  No If Yes \$ \_\_\_\_\_

\*Funding Source(s) required: \_\_\_\_\_

Funding from General Fund?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

**Grant/Amendment Information** (for grants acceptance and awards)  Award  Amendment

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Grant Number (i.e.,15-123): \_\_\_\_\_

Effective Date: \_\_\_\_\_ Termination Date: \_\_\_\_\_ Amendment Number: \_\_\_\_\_

Match Amount: \$ \_\_\_\_\_  Revenue Amount: \$ \_\_\_\_\_

\*All Funding Source(s) required: \_\_\_\_\_

\*Match funding from General Fund?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

\*Match funding from other sources?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

\*Funding Source: \_\_\_\_\_

\*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)? \_\_\_\_\_

Contact: Marcos Ysmael

Department: Comm. Dev. and Neighborhood Cons. Telephone: 724-2462

Department Director Signature/Date: Margaret M. Kane 06/12/2018

Deputy County Administrator Signature/Date: Jur 6/13/2018

County Administrator Signature/Date: C. R. Bullock 6/14/18  
*(Required for Board Agenda/Addendum Items)*

**PIMA COUNTY COMMUNITY DEVELOPMENT AND NEIGHBORHOOD CONSERVATION DEPARTMENT**

**Project Name:** International Sonoran Desert Alliance Historic Ajo Plaza Restaurant Rehabilitation

**Developer:** International Sonoran Desert Alliance  
PO Box 687  
Ajo, AZ 85231

**Developer DUNS No.:** 179480595

**Project Description:** Historic Ajo Plaza Restaurant Rehabilitation (Suite 167)

**Contract Term:** June 19, 2018 through June 19, 2019

**Amount:** \$100,000.00

**Funding:** U.S. Department of Housing and Urban Development  
Neighborhood Stabilization Program (NSP1)

**Federal Contract No.** B-08-UN-04-0502

**Award Date:** March 19, 2009

<b>CONTRACT</b>
NO. <u>CT-CD-18-411</u>
AMENDMENT NO. _____
This number must appear on all invoices, correspondence and documents pertaining to this contract.

CFDA	Program Description	Nation Funding	Pima County Award
14.218	Neighborhood Stabilization Program 1 (NSP1)	\$3,920,000,000	\$3,086,867.00

**Is this a Research and Development Contract:**  Yes  No

This Agreement is entered into by and between Pima County (“County”), a body politic and corporate of the State of Arizona, and the International Sonoran Desert Alliance (“Developer”), a non-profit corporation in the State of Arizona.

**RECITALS**

- A. County is authorized by A.R.S. §§ 11-254.04, 11-251 (5) and 11-251 (17), to spend public monies to improve and enhance the economic welfare and health of the inhabitants of the County.
- B. County sought and received federal funding under Title III of Division B of the Housing and Economic Recovery Act of 2008 (Public Law 110-289) (“HERA”).
- C. On March 19, 2009, the U.S. Department of Housing and Urban Development (“HUD”) executed the Funding Approval and Grant Agreement for Neighborhood Stabilization Program (“NSP”) Funds, NSP Grant No. B-08-UN-04-0502, awarding County \$3,086,867.00.
- D. On April 8, 2009, County executed the NSP Grant Agreement as County Contract No. 02-70-U-141849 accepting the NSP funds.
- E. County Board of Supervisors, in Resolution 2008-301, approved the NSP Substantial Amendment.
- F. As indicated by HUD data, the Substantial Amendment identified the community of Ajo, Arizona (“Ajo”) as an area of high residential foreclosure and abandonment risk in Pima County warranting NSP1 funding.

- G. County has documented that there remain vacant and blighted properties in need of redevelopment in the Ajo community.
- H. Program income was generated by Subrecipients of NSP1 funds from County. Program income must be utilized before grant funds, therefore, NSP1 grant funds are available for eligible NSP1 grant activities.
- I. County issued Solicitation CDNC-01-04-18 NSP1 (“the Solicitation”), noticing the availability of NSP1 grant funds to address redevelopment of vacant/blighted properties in the Ajo community.
- J. Developer submitted a response to Solicitation No. CDNC-01-04-18 NSP1 requesting NSP1 funds to redevelop additional vacant/blighted property at the Historic Ajo Plaza.
- K. County has determined that the activities proposed in Developer’s response to the Solicitation are eligible for NSP1 funding.
- L. Pursuant to 24 CFR 570.202(b)(1), County designates International Sonoran Desert Alliance as a private, non-profit developer

NOW THEREFORE, County and Developer agree as follows:

## **1.0 TERM, EXTENSIONS AND AMENDMENTS**

- 1.1 Original Term. This Agreement will commence on June 19, 2018 or upon execution by the County, whichever is later, and will terminate on June 19, 2019 (the “Initial Term”). “Term,” when used in this Agreement, means the Initial Term plus any exercised Extension Options.
- 1.2 Extension Options. County may renew this Agreement for up to one (1) additional period of up to one (1) year (an “Extension Option”). An Extension Option will be effective only upon execution by the Parties of a formal written amendment.
- 1.3 This Agreement may be modified, amended, altered or extended only by a written amendment signed by the parties. County must approve any amendment to the Agreement before any services commence under the amendment.
- 1.4 Notwithstanding paragraph 1.1 and 1.2 above, the terms of this Agreement will survive and remain in effect during any period that Developer has control over NSP1 funds, including program income.

## **2.0 SCOPE OF SERVICES**

- 2.1 Developer will:
  - 2.1.1 Provide the County with the services described in the attached **Exhibit A**.
  - 2.1.2 Employ suitably trained and skilled personnel to perform all services under this Agreement.
  - 2.1.3 Perform its duties in a humane and respectful manner and in accordance with any applicable professional standards.
  - 2.1.4 Unless otherwise provided for herein, the personnel delivering services pursuant to this Agreement will:
    - 2.1.4.1 Be subcontractors, professional consultants, or employees, apprentices or volunteers of the Developer;
    - 2.1.4.2 Satisfy any qualifications set forth in this Agreement; and
    - 2.1.4.3 Be covered by personnel policies and practices of Developer.
  - 2.1.5 Obtain and maintain all required licenses, permits and authority required for performance under this Agreement

- 2.1.6 Maintain an accounting manual that describes its financial procedures in sufficient detail to ensure that its financial practices are easily understood.
- 2.2 Developer certifies that no individual or agent has been employed or retained to solicit or secure this Agreement for commission, percentage, brokerage or contingent fee except a bona fide employee whose job duties include securing business.
- 2.3 No program funded under this Agreement may impair existing contracts for services or collective bargaining agreements or be inconsistent with the terms of a collective bargaining agreement without the written concurrence of the labor organization and employer concerned.

### 3.0 MONITORING AND EVALUATION

- 3.1 County will monitor all activities and information sources in the management, fiscal, and services systems of Developer and any subcontracted parties relating to performance of duties and obligations under this Agreement to ensure that Developer is:
  - 3.1.1 Making adequate and acceptable progress in the provision of services;
  - 3.1.2 Maintaining adequate and acceptable systems to document services and expenditures; and
  - 3.1.3 Using the funds provided pursuant to this Agreement effectively and efficiently to accomplish the purposes for which funds were made available.
- 3.2 Developer must cooperate in the monitoring and evaluation process by County and/or HUD.
- 3.3 Developer must assist County in providing reports and documentation to HUD related to Developer's performance and, where applicable, the impact of the NSP1-funded activities on the community.
- 3.4 If monitoring and evaluation finds that Developer's performance is substandard, Developer will be in default of this Agreement. If Developer fails to take appropriate actions to correct the default within fifteen (15) calendar days from date of notice, this Agreement may be suspended or terminated.
- 3.5 To the greatest extent permissible by law, County, and any authorized federal, state or local agency, including, but not limited to, the HUD and the Comptroller of the United States, will at all reasonable times have the right of access to Developer's facility, books, documents, papers, or other records which are pertinent to this Agreement, in order to make audits, examinations, excerpts and transcripts for the purpose of evaluating Developer's performance and Developer's compliance with this Agreement.

### 4.0 COMPENSATION AND PAYMENT

- 4.1 In consideration for services specified in **Exhibit A** of this Agreement, County agrees to pay Developer up to **\$100,000.00** ("the Maximum Allocated Amount").
- 4.2 Payment of the full Maximum Allocated Amount is subject to the NSP1 funds being made available to County for this Agreement. The Maximum Allocated Amount may be decreased at any time due to reduction, termination, or any other changes in funding. Unless specifically authorized by County, unexpended funds will not be carried over into another fiscal year.
- 4.3 No activities, except engineering and architectural services that are exempt according to 24 CFR 58.24 (a) (8), will be undertaken until all NEPA and NHPA compliance clearances have been obtained.
- 4.4 Developer **must submit a Monthly Report/Request for Payment**, attached hereto as **Exhibit B**, **every month**, even if no funds are being requested for the prior month. Requests for reimbursement are due as follows:

Agreement Month	Due date for Request for Reimbursement
January through April & July through December	20 calendar days from end of month
May	June 15
June	July 7

- 4.5 Each monthly request for reimbursement must:
- 4.5.1 Reference this Agreement number.
  - 4.5.2 Be approved and signed by both the person (s) that prepared the request and an authorized manager, supervisor or executive of the Developer to insure proper internal financial controls.
  - 4.5.3 Be for services and costs as identified in **Exhibit A**.
  - 4.5.4 Be accompanied by documentation which must include, but is not limited to:
    - 4.5.4.1 A summary report of monthly expenditures by expense categories as shown in approved budget in **Exhibit A** of this Agreement.
    - 4.5.4.2 Copies of invoices and checks (front and back) to support all purchases of goods or services.
    - 4.5.4.3 If reimbursement is authorized for travel, detailed travel reports to support all travel expenses.
    - 4.5.4.4 Any other documentation requested by County.
  - 4.5.5 Be accompanied by a signed hardcopy or electronic copy of the signed Financial Status Report and Request for Funds. County will provide Developer with a form similar to that attached hereto as **Exhibit B** upon execution of this Agreement.
- 4.6 When NSP1 funds are used to pay the costs of personnel, Developer must provide source documentation for payroll which may include, but is not limited to:
- 4.6.1 Employment letters;
  - 4.6.2 Authorization for rates of pay, benefits, and withholding;
  - 4.6.3 Minutes from Board of Directors' meetings establishing salary schedules and benefit packages;
  - 4.6.4 Copies of written policies;
  - 4.6.5 W-4 forms and associated time and attendance records;
  - 4.6.6 Employee certifications of time spent:
    - 4.6.6.1 If an employee of Developer works solely on the services being funded by NSP1, the employee and the employee's supervisor must sign a statement every six months certifying that the employee worked only on the NSP1 -funded services.
    - 4.6.6.2 If an employee's time is split between the services being funded by NSP1 and non-NSP1 services and funding sources, Developer must have time distribution records supporting the allocation of charges among the various funding sources.
- 4.7 If Developer is required to provide matching funds under the terms of the awarding agency, Developer must also provide the documentation described in paragraphs 4.5.4, 4.5.5, and 4.6 for the matching funds.
- 4.8 **Developer must utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.** Developer may not bill the County for costs which are paid

by another source. Developer 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.

4.9 If each request for payment includes adequate and accurate documentation, County will generally pay Developer within thirty (30) days from the date invoice is received. Developer should budget cash needs accordingly.

4.10 County may, at its sole discretion:

4.10.1 Determine the acceptability and progress of work performed and determine the resulting entitlement to payment of each request for reimbursement.

4.10.2 Liquidate funds available under this Agreement for costs incurred by County on behalf of Developer.

4.10.3 **Deny full payment** for requests for reimbursement that are submitted to County after the date set forth in paragraph 4.4 above. County may deduct its processing costs or delay-related damages in connection with a request for payment submitted after that date.

4.10.4 **Deny payment** for any request for reimbursement received after the following dates:

Month Expense Incurred	Denial date
January through March July and August October through December	More than 60 days after the end of the month in which the expense was incurred
April and May	June 21
June	July 15
September	October 31

If payment is made on such a delinquent request, **County will deduct its processing costs or delay-related damages.**

4.11 Pursuant to A.R.S. § 11-622, County **will deny reimbursement completely** for requests for payment made later than six months after the last item of the account accrues.

4.12 **REQUEST FOR FINAL PAYMENT** for compensation earned and/or eligible costs incurred will be submitted to the County within **15 working days after the end of the Agreement term**. The request must meet the requirements set forth in paragraphs 4.5 and 4.6 above and include a report summarizing Developer's performance during the term of the Agreement.

4.13 **No payments will be made to Developer, until all of the following conditions are met:**

4.13.1 Developer has completed and submitted a W-9 Taxpayer Identification Number form;

4.13.2 Developer has registered as a Pima County Vendor at the following web address -- <https://secure.pima.gov/procurement/vramp/login.aspx>;

4.13.3 This Agreement is fully executed; and

4.13.4 Adequate and accurate documentation is provided with each request for payment or invoice.

4.13.5 One-half of the Developer's Fee may be requested by Developer upon fifty-percent (50%) completion of the project and remaining one-half of the Developer's Fee may be requested by Developer upon one-hundred percent (100%) completion of the project.

4.14 Developer will report to County:

4.14.1 Accrued expenditures; and

4.14.2 All other fiscal resources applied to expenses incurred in providing services under this Agreement.

4.15 Changes between budget line items may only be made as follows:

- 4.15.1 A written request for the line item change is submitted at least six (6) weeks prior to the termination date of the Agreement. The written request must contain all of the following:
  - 4.15.1.1 A detailed explanation of the need for the change;
  - 4.15.1.2 Proof that the requested change will not change the specified purpose, the metrics, or the outcomes of this Agreement; and
  - 4.15.1.3 Proof that the proposed increase is offset by a decrease of equal value to the remaining line items.
- 4.15.2 Changes to line items will only be considered for future expenditures, not for expenditures already incurred by Developer, which were not part of the existing budget.
- 4.15.3 Changes that do not increase or decrease the total budget amount may be granted by and at the sole discretion of the Director of Community Development and Neighborhood Conservation or designee. **The change will not be effective, nor will compensation under the change be provided, until the date set forth in the written approval of the Director or designee.**
- 4.15.4 Changes that increase or decrease the total budget amount or that change the Scope of the Agreement in any way will require a contract amendment. **The change will not be effective, nor will compensation under the change be provided, until the amendment is fully executed by both parties.**

4.16 Disallowed Charges or Cost principles will be as follows:

- 4.16.1 The cost principle set forth in the Code of Federal Regulations (CFR), Title 48, Chapter 1, Part 31.201-6, (October 1, 1991), as modified by amendments and additions, on file with the Secretary of State and incorporated herein by reference, will be used to determine whether reimbursement of an incurred cost will be allowed under this Agreement. Those costs which are specifically defined as unallowable therein cannot be submitted for reimbursement by the Developer and will not be reimbursed with Department funds.
- 4.16.2 **Developer 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.**

4.17 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.

## 5.0 PROGRAM INCOME

- 5.1 County does not anticipate that Developer will receive revenues, but in the event program income is generated, County directs Developer to use those revenues for the operations and management of the renovated restaurant (Ajo Plaza, South Building, Suite 167); however, County approval is required prior to expenditure of program income.
- 5.2 Pursuant to regulations and HUD Policy Alerts governing the use of NSP1 funds, revenues received by Developers are not considered program income.
- 5.3 At least annually, and, additionally, upon County's request, Developer must provide documentation of revenues received and used, to the satisfaction and approval of County.



## 6.0 INSURANCE

6.1 Developer 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 Developer’s indemnity obligations under this Agreement. The County in no way warrants that the required insurance is sufficient to protect the Developer for liabilities that may arise from or relate to this Agreement. If necessary, Developer 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 covering liability arising from premises, independent contractors, personal injury, bodily injury, broad form contractual liability and products-completed operations with minimum limits not less than \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate.

6.2.2 Business Automobile Liability: Coverage for 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.

6.2.3 Workers’ Compensation (WC) and Employers’ Liability:

6.2.3.1 Workers’ Compensation with Employers Liability limits of \$1,000,000 each accident and \$1,000,000 each employee – disease. Workers’ Compensation statutory coverage is compulsory for employers of one or more employees.

6.2.3.2 Note: The Workers’ Compensation requirement does not apply if Developer is exempt under A.R.S. § 23-901, and has executed the appropriate Pima County Sole Proprietor (Independent Contractor) Waiver form.

### 6.3 Additional Insurance Requirements:

6.3.1 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.

6.3.2 Additional Insured: The General Liability policy must be endorsed to include Pima County 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 Developer. 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 and Workers’ Compensation coverages must each contain a waiver of subrogation in favor of County and its Agents for losses arising from work performed by or on behalf of the Developer.

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 Developer’s deductible or Self Insurance Retention (SIR).

6.3.5 Subcontractors: Developer 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, Developer must furnish, if requested by County, appropriate insurance certificates for each subcontractor. Developer must obtain County’s approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.

## 6.4 Verification of Coverage:

- 6.4.1 Insurer or Broker of Developer must evidence compliance with the Insurance Requirements by furnishing certificates of insurance executed by a duly authorized representative of each insurer. Each certificate must include:
  - 6.4.1.1 The Pima County tracking number for this Agreement, which is shown on the first page of the Agreement, and a project description, in the body of the Certificate,
  - 6.4.1.2 A notation of policy deductibles or self-insured retentions (SIRs) relating to the specific policy, and
  - 6.4.1.3 Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation waiver endorsements for the County and its Agents.
- 6.4.2 Each Required Insurance policy and appropriate endorsements must be in effect not less than 15 days prior to commencement of work under this Agreement. A renewal certificate must be provided to County not less than 15 days prior to the policy's expiration date to include actual copies of the additional insured and waiver of subrogation endorsements. Failure to maintain the Required Insurance, or to provide evidence of renewal, is a material breach of this Agreement.
- 6.4.3 County reserves the right to, at any time, require complete copies of any or all Required Insurance policies.
- 6.4.4 Cancellation Notice: Developer's insurance policies and endorsements shall not be permitted to expire, be cancelled, suspended or materially changed from the agreed upon Insurance Requirements for any reason without thirty (30) days advance written notice to the County of the policy cancellation, suspension or material change. Developer must provide written notice to County within 2 business days of receipt of notice. For cancellation of non-payment, Insurer is to provide County with written notice 10 days prior to cancellation of policy.

- 6.5 **Approval and Modifications:** The Pima County Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal Agreement amendment, but the approval must be in writing. 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, or the County's receipt of any other information from the Developer, 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, Developer 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 Developer or any of Developer'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 Developer 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 Developer from and against any and all claims. Developer is responsible for primary loss investigation, defense and judgement costs for any claim to which indemnity applies. This indemnity will survive the expiration or termination of this Agreement.

## **8.0 COMPLIANCE WITH LAWS**

- 8.1 Compliance with Laws; Changes. Developer will comply with all 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. Developer 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.
- 8.4 Compliance with 24 CFR 570. Developer will comply with the requirements of 24 CFR 570, including Subpart K of these regulations, except Developer does not assume:
- 8.4.1 County's environmental responsibilities described in 24 CFR 570.604; and
  - 8.4.2 County's responsibility for initiating the review process under the provisions of 24 CFR Part 52.
- 8.5 Use of NSP1 Funds. Developer warrants that NSP1 funds will not be used for and personnel will not engage in:
- 8.5.1 Political activities;
  - 8.5.2 Inherently religious activities;
  - 8.5.3 Lobbying;
  - 8.5.4 Political patronage; or
  - 8.5.5 Nepotism activities.
- 8.6 Compliance with Federal Law, Rules and Regulations. Developer will comply with the applicable provisions of:
- 8.6.1 Davis-Bacon Act (Public Law 107-217), as amended;
  - 8.6.2 Contract Work Hours and Safety Standards Act (40 USC 327 *et seq.*);
  - 8.6.3 Copeland Anti-Kick Back Act (18 USC 874 *et seq.*);
  - 8.6.4 Section 3 of the HUD Act of 1968 as amended; and
  - 8.6.5 All rules and regulations applicable to the Acts set forth above.
- 8.7 Cooperation. Developer will fully cooperate with County, HUD and any other federal agency in the review and determination of compliance with the above provisions.

## **9.0 INDEPENDENT CONTRACTOR**

- 9.1 Developer is an independent contractor. Neither Developer nor any of Developer'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.
- 9.2 Developer is responsible for paying all federal, state and local taxes on the compensation by Developer under this Agreement and will indemnify and hold County harmless from any and all liability which County may incur because of Developer's failure to pay such taxes.
- 9.3 Developer will be solely responsible for its program development, operation, and performance.

## **10.0 SUBCONTRACTOR**

- 10.1 Except as provided in paragraph 10.2 below, Developer will not enter into any subcontracts for any services to be performed under this Agreement without County's prior written approval of the subcontract. Developer must follow all applicable Federal, State, and County rules and regulations for obtaining subcontractor services.
- 10.2 Prior written approval is not required for the purchase of supplies that are necessary and incidental to Developer's performance under this Agreement.
- 10.3 Developer 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 Developer is responsible for the acts and omissions of persons directly employed by it. Nothing in this Agreement 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.
- 10.4 Developer must include the provision set forth in paragraph 4.16 in all contracts between Developer and its subcontractors providing goods or services pursuant to this Agreement. Developer will be responsible for subcontractors' compliance with that provision and for any disallowances or withholding of reimbursements resulting from noncompliance of said subcontractors with the provision.

## **11.0 ASSIGNMENT**

Developer cannot assign its rights or obligations under this Agreement, in whole or in part, without County's prior written approval. County may withhold approval at its sole discretion.

## **12.0 NON-DISCRIMINATION**

- 12.1 Developer 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.
- 12.2 During the performance of this Agreement, Developer 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.

## **13.0 AMERICANS WITH DISABILITIES ACT**

Developer will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. If Developer is carrying out a government program or services on behalf of County, then Developer will maintain accessibility to the program to the same extent and degree that would be required by the County under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so could result in the termination of this Agreement.

## **14.0 AUTHORITY TO CONTRACT**

Developer 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 Developer, 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 full and complete performance of any of the terms or conditions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, will not be construed as a waiver or relinquishment of the right to

insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time will not be construed as an accord and satisfaction.

## **16.0 CANCELLATION FOR CONFLICT OF INTEREST**

- 16.1 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.
- 16.2 Developer agrees to comply with all applicable conflict of interest provisions contained in Federal laws and regulations that govern the awarding agency including 24 CFR §§ 84.42 and 570.611.

## **17.0 TERMINATION AND SUSPENSION**

- 17.1 Without Cause: County may terminate this Agreement at any time, without cause, by serving a written notice upon Developer at least thirty (30) days before the effective date of the termination. In the event of such termination, the County's only obligation to Developer will be payment for services rendered prior to the date of termination.
- 17.2 With Cause: Except as set forth in paragraph 3.4, County may terminate this Agreement at any time without advance notice and without further obligation to County finds Developer to be in default of any provision of this Agreement.
- 17.3 Insufficient Funds: Notwithstanding Paragraphs 17.1 and 17.2 above, if any state or federal grant monies used to pay for performance under this Agreement are reduced or withdrawn, County will have the right to either reduce the services to be provided and the total dollar amount payable under this Agreement or terminate the Agreement. To the extent possible, County will endeavor to provide fifteen (15) days written notice of such reduction or termination. In the event of a reduction in the amount payable, County will not be liable to Developer for more than the reduced amount. In the event of a termination under this paragraph, County's only obligation to Developer will be payment for services rendered prior to the date of termination to the extent that grant funds are available.
- 17.4 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 Developer, other than for services rendered prior to termination.
- 17.5 Suspension: County reserves the right to suspend Developer's performance and payments under this Agreement immediately upon notice delivered to Developer's designated agent in order to investigate Developer's activities and compliance with this Agreement. In the event of an investigation by County, Developer 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, Developer will be notified in writing that the Agreement will be immediately terminated or that performance may be resumed.

## **18.0 NOTICE**

- 18.1 Developer 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:**

Margaret Kish, Director  
Pima County Community  
Development & Neighborhood  
Conservation Department  
2797 E. Ajo Way  
Tucson, AZ 85713

**Developer:**

Aaron Cooper, Executive Director  
International Sonoran Desert Alliance  
38 N. Plaza Street  
P.O. Box 687  
Ajo, AZ 85321

**19.0 OTHER DOCUMENTS**

19.1 In entering into this Agreement, Developer and County have relied upon information provided in Developer's proposal submitted in response to the Solicitation identified in the recitals of this Agreement including the Instructions to Bidders, Standard Terms and Conditions, Specific Terms and Conditions, Solicitation Addenda, Developer's Proposal, other information and documents submitted by the Developer in its response to the Solicitation.

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. Developer will promptly bring any provisions which Developer believes are inconsistent to County's attention, and County will provide Developer with its interpretation of the provisions in question. In the event of an irreconcilable inconsistency, the provisions of the awarding agency documents will govern over the conditions of this Agreement, unless otherwise required by law.

**20.0 BOOKS AND RECORDS**

20.1 Developer will keep and maintain all records specified in 24 CFR 570.506 which are pertinent to the activities funded under this Agreement. All such records will be open for inspection and audit by duly authorized representatives of County during normal business hours. Records include, but are not limited to:

20.1.1 A full description of each action or activity taken to comply with this Agreement;

20.1.2 Demonstration that the actions and activities meet one or more of the National Objectives of the NSP1 program;

20.1.3 Eligibility documentation and determination;

20.1.4 Documentation of compliance with the fair housing and equal opportunity components of the NSP1 program;

20.1.5 Disbursements of funds;

20.1.6 Financial records required under 24 CFR § 570.502 and 24 CFR §§ 84.21 – 28; and

20.1.7 Documentation of compliance with Subpart K of 24 CFR Part 570.

20.2 Developer must retain all records pertaining to this Agreement for four (4) years after County submits the annual performance and evaluation report to HUD in which the NSP1 -funded activities under this Agreement are reported on for the final time or until completion of any action and resolution of all issues which arise from any related litigation, claim, negotiations, audit or other action involving the records that was started before the expiration of the 4-year period, whichever is later.

## 21.0 AUDIT REQUIREMENTS

### 21.1 Developer will:

- 21.1.1 Comply with the applicable provisions of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Parts 200 and 2400).
- 21.1.2 **Establish and maintain a separate, identifiable accounting of all funds provided by County under this Agreement.** The accounting must record all expenditures which are used to support invoices and requests for payment from the County.
- 21.1.3 Establish and maintain accounting records which identify the source and application of any funds not provided under this Agreement used to support these Agreement activities.
- 21.1.4 Ensure that all accounting records meet the requirements of the Federal, State, County, and generally accepted accounting principles laws and regulations.
- 21.1.5 Upon written notice from County, provide a program-specific or financial audit. Such notice from County will specify the period to be covered by the audit, the type of audit and the deadline for completion and submission of the audit.
- 21.1.6 Assure that any audit conducted pursuant to this Agreement is performed by a qualified, independent accounting firm and submitted to County within six (6) months of completion of the audit required pursuant to this Section 21.0, unless a different time is specified by County. The audit submitted must include Developer responses, if any, concerning any audit findings.
- 21.1.7 Pay all costs for any audit required or requested pursuant to this Section 21.0, unless the cost is allowable for payment with the grant funds provided pursuant to this Agreement under the appropriate federal or state grant law and the cost was specifically included in the Developer grant budget approved by County.

### 21.2 Developer status:

- 21.2.1 If Developer is a "nonprofit corporation" that meets the definition of "corporation" in A.R.S. §10-3140, Developer will comply with the applicable audit requirements set forth in A.R.S. § 11-624, "Audit of Non-Profit Corporations Receiving County Monies."
- 21.2.2 If Developer meets or exceeds the single audit threshold set forth in 2 C.F.R. Part 200, Developer will comply with federal single audit requirements and, upon request from County, provide County with a copy of the required audit document within ninety (90) days following the end of Developer's fiscal year.

### 21.3 Developer must timely submit the required or requested audit(s) to:

Pima County Community Development and Neighborhood Conservation Department  
Attn: Director  
2797 E. Ajo Way, 3<sup>rd</sup> Floor  
Tucson, AZ 85713

## 22.0 COPYRIGHT

Neither Developer 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.

## 23.0 PROPERTY OF THE COUNTY

23.1 Developer is not the agent of County for any purpose and will not purchase any materials, equipment or supplies on the credit of County.

23.2 Any materials, including reports, computer programs and other deliverables, created under this Agreement are the sole property of County. Developer is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. Developer will not use or release these materials without the prior written consent of County.

#### **24.0 DISPOSAL OF PROPERTY**

Termination of this Agreement will not relieve any party from liabilities or costs already incurred under this Agreement, nor affect any ownership of property pursuant to this Agreement.

#### **25.0 COORDINATION**

On matters relating to the administration of this Agreement, County will be Developer's contact with all Federal, State and local agencies that provide funding for this Agreement.

#### **26.0 ISRAEL BOYCOTT CERTIFICATION**

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

#### **27.0 PUBLIC RECORDS**

27.1 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.

27.2 Records Marked Confidential; Notice and Protective Order.

27.2.1 If Developer reasonably believes that some of the records described in paragraph 27.1 above contain proprietary, trade-secret or otherwise-confidential information, Developer must prominently mark those records "CONFIDENTIAL."

27.2.2 In the event that a public records request is submitted to County for records marked "CONFIDENTIAL," County will notify Developer of the request as soon as reasonably possible.

27.2.3 County will release the records ten (10) business days after the date of notice provided pursuant to paragraph 27.2.2, unless Developer has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records.

27.2.4 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.

#### **28.0 ELIGIBILITY FOR PUBLIC BENEFITS**

Developer 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.

#### **29.0 LEGAL ARIZONA WORKERS ACT COMPLIANCE**

29.1 Compliance with Immigration Laws. Developer hereby warrant that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to Developer's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State



and Federal Immigration Laws”). Developer will further ensure that each subcontractor who performs any work for Developer under this Agreement likewise complies with the State and Federal Immigration Laws.

- 29.2 Books and Records. County has the right at any time to inspect the books and records of Developer and any subcontractor in order to verify such party’s compliance with the State and Federal Immigration Laws.
- 29.3 Remedies for Breach of Warranty. Any breach of Developer’s, or any subcontractor’s warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this Section 29.0, is a material breach of this Agreement subjecting Developer 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, Developer 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 Developer.
- 29.4 Subcontractors. Developer will advise each subcontractor of County’s rights, and the subcontractor’s obligations, under this Section 29.0 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 Agreement 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 Agreement.”*

### **30.0 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.

### **31.0 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.

### **32.0 NON-EXCLUSIVE AGREEMENT**

Developer 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.

### **33.0 ENTIRE AGREEMENT**

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

33.2 No verbal agreements or conversations with any officer, agent or employee of County prior to or after the execution of this Contract will affect or modify any of the terms or obligations contained in any

documents comprising this Contract. Any such verbal agreements are unofficial information and in no way binding upon County.

**34.0 COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument. Signatures may be transmitted via facsimile or may be electronically scanned and e-mailed, and delivery by either facsimile or e-mail to all other Parties shall be deemed sufficient for all purposes to the same extent as would be delivery of an original signature.

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

**PIMA COUNTY**

**DEVELOPER**

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

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed name and title

ATTEST

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

APPROVED AS TO CONTENT:

Margaret M. Kue 06/12/2018  
\_\_\_\_\_  
Director, Community Development  
and Neighborhood Conservation

APPROVED AS TO FORM:

Chris Straub 6/12/2018  
\_\_\_\_\_  
Chris Straub for: Karen S. Friar,  
Deputy County Attorney

**EXHIBIT A**  
**SCOPE OF WORK**

1. **Project Title and Location:** International Sonoran Desert Alliance Historic Ajo Plaza Restaurant Rehabilitation (“the Project”).  
Area Served: Ajo CDBG Community Development Target Area (“Ajo Target Area”)  
Project Location:  
Ajo Plaza, South Plaza Building – Restaurant Suite 167 (“the Facility”)  
38 N. Plaza Street  
Ajo, AZ 85321
2. **Project Purpose:** Convert a vacant, outdated restaurant facility into a full-service restaurant that will become the Plaza’s anchor enterprise stimulating economic activity to the advantage of the Ajo community.
3. **Project Activities:**
  - 3.1. Renovations of the Facility will include, but are not limited to:
    - 3.1.1. Abatement of asbestos-containing materials;
    - 3.1.2. Installation of new HVAC system;
    - 3.1.3. Installation of a Rinse-Wash-Sanitize sink bar;
    - 3.1.4. Repair and replacement of building components including, as necessary, walls, floors, ceilings, doors and windows;
    - 3.1.5. Replacement of Hot Water Heater with Energy Star© unit;
    - 3.1.6. Repair of roof and exterior walls connected to the restaurant and adjacent office spaces;
    - 3.1.7. Extension of lighting and electrical circuits into the large dining area; and
    - 3.1.8. Abatement and building envelope issues in an adjacent office spaces.
  - 3.2. Developer will cooperate with County to complete all required NEPA and NHPA compliance clearances, consult with Arizona State Historic Preservation Office (SHPO), and any required testing and inspections.
  - 3.3. Developer will ensure that the renovations set forth in paragraph 3.1 above are done by certified federal, state and local contractors and consultants.
  - 3.4. **General Provisions.** Developer will:
    - 3.4.1. Submit design plans and product specifications for the activities set forth in paragraph 3.1 above, to Pima County for review and approval.
    - 3.4.2. Where economically feasible, procure equipment and systems which incorporate cost-effective green building standards that reduce energy and maintenance costs, improve health and safety of the building occupants and visitors, and reduce environmental impacts as recommended for non-housing activities by the Enterprise Green Communities Criteria, available at [www.greencommunitiesonline.org](http://www.greencommunitiesonline.org).
    - 3.4.3. Engage licensed architects, engineering services, and contractors as follows:
      - 3.4.3.1. Subject to paragraph 3.2.3.3 below, select the most qualified party meeting specifications for trade required;
      - 3.4.3.2. Comply with Federal Labor Standards, including Davis-Bacon prevailing wage

rates and certified weekly payroll reporting requirements, and any HUD or other federal regulations, such as Equal Employment Opportunity and Section 3; and

- 3.4.3.3. Obtain Pima County Community Development & Neighborhood Conservation Department (CDNC) approval of all procurement documents in the bid packet before bids are solicited and before any contracts or sub-contracts are awarded.
- 3.4.4. Obtain required state and local building permits.
- 3.4.5. Manage all construction activities, including, but not limited to, scheduling, inspecting work and approving contractor invoices.
- 3.4.6. Retain, operate, and maintain the rehabilitated restaurant and adjacent office for a minimum of ten (10) years in a manner which:
  - 3.4.6.1. Extends their useful life to the greatest extent possible; and
  - 3.4.6.2. Provides additional safety measures for staff and public using the community center.
- 3.4.7. Developer must execute the Deed of Trust in the amount of \$100,000.00 in the form attached **Exhibit C** to The executed Deed of Trust will be recorded in the Office of the Pima County Recorder and is incorporated into and made a part of this grant Agreement, as though set forth in full herein.

**4. Project goal/predicted outcomes:**

- 4.1. Goal: Stimulate economic development and employment opportunities in the Ajo Target Area.
- 4.2. Predicted outcome: The restaurant facility will be leased to a qualified restaurateur and the office spaced leased for commercial use to increase employment opportunities and enhance the economic development of the Ajo Target Area.

**5. Public benefit – NSP National Objective and Eligible Activity:**

Upon completion, the Project will meet the HUD NSP National Objective to eliminate slum/blight and to provide economic development opportunities that benefit low- to moderate-income persons in the Ajo Target Area.

**6. Metrics available to measure performance:**

- 6.1 Upon completion of the improvements, Developer will lease the redeveloped restaurant space to a qualified restaurateur and will ease the office space for commercial use, creating employment and training opportunities.
- 6.2 When the restaurant and office facilities are leased, Developer will report the number of full-time and part-time jobs generated by the renovation and leasing of the Facility.

**7. Reports: Developer will:**

- 7.1. Provide quarterly reports no later than 15 calendar days following the end of each quarterly period (March 30; June 30; September 30; and December 31) to County for submission to HUD. The reports must include, but are not limited to:
  - 7.1.1. Project Status and accomplishment narrative; and
  - 7.1.2. Number of part time and full time jobs created and training opportunities created.
- 7.2. At least annually, provide a statement of income generated by the improved restaurant and office space and the applicable operated expenses (Profit and Loss Statement).

7.3. All reporting provisions will survive the termination of this Agreement, and will continue throughout the ten-year compliance period defined in Section 3.3 of **Exhibit C**.

7.4. **Budget:**

<b>NSP1 Funded Activities</b>	<b>Budget</b>
Architectural & Engineering Services	\$6,000.00
Site preparation and Building Renovation	\$73,500.00
Renovation Contingencies	\$10,500.00
Developer Fee	\$10,000.00
<b>Total</b>	<b>\$100,000.00</b>

**END OF EXHIBIT A**

INTERNATIONAL SONORAN DESERT ALLIANCE  
 HISTORIC AJO PLAZA RESTAURANT REHABILITATION  
 PIMA COUNTY CONTRCT NO. CT – CD – 18\* \_\_\_\_\_

**MONTHLY REPORT/REQUEST FOR PAYMENT**

MONTH OF: \_\_\_\_\_, 20\_\_\_\_\_

ACTIVITY	BUDGET AMOUNT	AMOUNT REQUESTED THIS MONTH	CUMULATIVE AMOUNT REQUESTED	BALANCE REMAINING
Architectural and Engineering	\$6,000.00			
Building Renovation	\$73,500.00			
Renovation Contingencies	\$10,500.00			
Developer Fee	\$10,000.00			
TOTAL	\$100,000.00			

**Attach a detailed project development budget** showing all costs incurred to date under all funding sources. A copy of the most current Application and Certification for Payment [AIA Document G702] or other similar form will meet this requirement.

**ADDITIONAL PROJECT INFORMATION FOR REPORTING PERIOD:**

- Monthly Activity Summary:
- Milestones completed:
- Problems encountered:
- Changes requested for Construction or Reimbursement Schedule:

**END OF EXHIBIT B**

EXHIBIT C

When recorded, return to:

Pima County Community Development and Neighborhood Conservation Department  
2797 E. Ajo Way, 3rd Fl.  
Tucson, Arizona 85713

PERFORMANCE DEED OF TRUST

DATE: \_\_\_\_\_, 2018

TRUSTOR: International Sonoran Desert Alliance, a non-profit corporation registered to do business in the State of Arizona, whose mailing address is:

PO Box 687  
Ajo, AZ 85321

TRUSTEE: Title Security Agency, whose mailing address is: 1 South Church Avenue, Suite 1610, Tucson, AZ 85701.

BENEFICIARY: Pima County, a political subdivision of the State of Arizona, whose mailing address is:

Pima County Community Development & Neighborhood Conservation  
Attention: Pima County NSPI Program  
Pima County Housing Center  
801 W. Congress Street  
Tucson, Arizona 85745

TRUST PROPERTY: Properties situated in Pima County, Arizona, described as follows:

Legal Description: AJO TOWNSITE LOTS 11 THRU 21 BLK 1  
Arizona Tax Parcel: 401-23-011A

1. **Parties.** This Deed of Trust is entered into by and among the Trustor, Trustee and Beneficiary.
2. **Grant of Property.** Trustor hereby irrevocably grants, conveys, transfers and assigns to the Trustee in Trust, with Power of Sale, the Property, together with leases, issues, profits, or income therefrom (all of which are "*Property Income*"), subject to:
  - 2.1. the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income, and
  - 2.2. current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record.

3. **Security.** The grant pursuant to paragraph 2 above is for the purpose of securing all of the following:
  - 3.1. Performance of the terms of the Pima County NSPI Program funding contract, Pima County Contract No. CT – CD 18\*0411, between Beneficiary and Trustor (the “*Grant Agreement*”), attached hereto as **Attachment A**;
  - 3.2. Neighborhood Stabilization Program 1 (“NSPI”) funds in the amount of \$100,000.00 (the “*County Contribution*”), provided that the parties hereto acknowledge and agree Trustor has no obligation to repay the *County Contribution* to Beneficiary, except as provided in the *Grant Agreement* and this Performance Deed of Trust; and
  - 3.3. Trustor’s obligation pursuant to Exhibit A – Scope of Work, Section 3, of the *Grant Agreement* to retain title to and operate the property in accordance with and for the purposes set forth in the *Grant Agreement* to provide services in the Ajo Target Area for a period of ten (10) years (the “*Compliance Period*”) following the completion of the facility improvements funded under the *Grant Agreement*.
4. **Obligations of Trustor to Protect Security.** To protect the security of this Performance Deed of Trust, Trustor agrees:
  - 4.1. to keep the Property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any action upon the Property in violation of law; and to do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general;
  - 4.2. to provide, maintain, and deliver to Beneficiary fire and other property insurance satisfactory to and with loss payable to Beneficiary. Beneficiary may apply any amounts collected under any fire or other insurance policy to any indebtedness secured hereby and in such order as Beneficiary may determine, or at the sole option of Beneficiary all or any portion of the amount so collected may be released to Trustor. Such application or release does not cure or waive any default or notice of Trustee’s sale hereunder or invalidate any act done pursuant to such notice;
  - 4.3. to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses of Beneficiary and Trustee, including cost of evidence of title and attorney’s fees and costs in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary or Trustee to foreclose this Deed of Trust;
  - 4.4. to pay, before delinquent, all taxes and assessments affecting the Property, all encumbrances, charges, and liens, with interest, on the Property or any part thereof, which appear to be prior or superior hereto; all costs, fees, and expenses of this Trust, including, without limiting the generality of the foregoing, the fees of Trustee for issuance of any Deed of Partial Release and Partial Reconveyance or Deed of Release and Full Reconveyance, and all lawful charges, costs, and expenses in the event of reinstatement of, following default in, this Deed of Trust or the obligations secured hereby.
  - 4.5. That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority, during the continuance of this Trust, to collect income generated by the Property (“income”), reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such income as it becomes due and payable. Upon any such default, Beneficiary may at any time, without notice, either in person, by agent, or by a receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect such income, including that past due and unpaid, and apply the same,



less costs and expenses of operation and collection, including reasonable attorney's fees and costs, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such income, and the application thereof as aforesaid, does not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.

**5. Right of Beneficiary or Trustee to Protect Security.**

- 5.1. Should Trustor fail to make any payment or to do any action herein provided, Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may believe necessary to protect the security hereof. Beneficiary or Trustee are authorized to enter upon the Property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel, and pay reasonable attorney's fees and costs.
- 5.2. Trustor shall pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, together with interest from date of expenditure at the legal rate. Any amounts so paid by Beneficiary or Trustee shall become a part of the debt secured by this Performance Deed of Trust and a lien on said premises or immediately due and payable at option of Beneficiary or Trustee.

**6. Repayment of County Contribution.** Trustor agrees that the *County Contribution* shall become immediately due and payable to County, only upon the occurrence of any of the following events (individually "*Event of Repayment*"):

- 6.1. a breach of the *Grant Agreement* upon the expiration of thirty (30) days after County shall deliver to Trustor a notice of repayment or such longer period of time as shall be reasonable under the circumstances, provided that Trustor shall commence the cure within such thirty (30) day period and thereafter diligently proceed to complete such cure ("*Cure Period*"); or
- 6.2. in the event that Trustor sells, contracts to sell, gives an option to purchase, conveys, transfers or alienates the Property, or suffers its title to, or any interest in the Property to be divested, whether voluntarily or involuntarily; or
- 6.3. the commencement of a sale of the Property by a senior lienholder, either by Trustee's sale or by judicial foreclosure.

**7. Right to Sell Property.**

- 7.1. Upon the occurrence of an *Event of Repayment*, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof, and of election to cause to be sold the Property under this Performance Deed of Trust. Beneficiary also shall deposit with Trustee this Performance Deed of Trust.
- 7.2. Trustee shall record and give notice of Trustee's sale in the manner required by law, and after the lapse of such time as may then be required by law, subject to the statutory rights of reinstatement, the Trustee shall sell, in the manner required by law, the Property at public auction at the time and place fixed by it in said notice of Trustee's sale to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to such purchaser its Deed conveying the property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

- 7.3. After deducting all costs, fees, and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney's fees, Trustee shall apply the proceeds of sale to payment of all sums then secured hereby and all other sums due under the terms hereof, including the *County Contribution*, with accrued interest; and the remainder, if any, to the person or persons legally entitled thereto, or as provided in A.R.S. § 33-812. To the extent permitted by law, an action may be maintained by Beneficiary to recover a deficiency judgment for any balance due hereunder.
8. **Injunctive Relief.** Trustor agrees that in the event of a breach or threatened breach of the *Grant Agreement*, Beneficiary or Trustee may seek to enforce such obligations and may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction against such breach or threatened breach, and Trustor hereby consents to an order permanently enjoining Trustor from violating the *Grant Agreement* during the term of this Performance Deed of Trust. However, no specification in this Deed of Trust of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach of a provision of this Performance Deed of Trust.
9. **Miscellaneous.**
- 9.1. Successor Trustee. Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers, and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.
- 9.2. Binding Agreement. *This Performance Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.* In this Performance Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.
- 9.3. Duties of Trustee. That Trustee accepts this Trust when this Performance Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.
- 9.3.1. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.
- 9.3.2. Any time or from time to time, and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note(s) for endorsement, and without liability therefor, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof of the Property affected by the Trustee's action be credited on the indebtedness, the Trustee may:
- 9.3.2.1. release and reconvey all or any part of the Property;
- 9.3.2.2. consent to the making and recording, or either, of any map or plat of the Property or any part thereof;
- 9.3.2.3. join in granting any easement thereon; or
- 9.3.2.4. join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance, or charge hereof.
- 9.3.3. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said note(s) to Trustee for cancellation, and upon payment of its fees, Trustee will release and reconvey, without covenant or warranty, express or implied, the Property then held hereunder. The recitals in such reconveyance of any matters or facts are

conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

- 9.4. Request for Notice by Trustor. Trustor(s) request that a copy of any notice of Trustee's sale hereunder be mailed to each Trustor at its address hereinbefore set forth.
- 9.5. Notices. All notices to be delivered under this Performance Deed of Trust shall be by first class mail, registered mail or certified mail, postage prepaid, and delivered to the addresses set forth in this Performance Deed of Trust, unless written notice of a change of address has been delivered.
- 9.6. Eminent Domain. That any award of damages in connection with any direct or indirect exercise of governmental police power or eminent domain, or for injury to the Property by reason of public use, or for damages for private trespass or injury thereto, is assigned and will be paid to Beneficiary as further security for all obligations secured hereby (reserving unto the Trustor, however, the right to sue therefor and the ownership thereof subject to this Deed of Trust). Upon receipt of such moneys Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.
- 9.7. Time of the Essence. That time is of the essence of this Deed of Trust, and that by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

TRUSTOR:

**International Sonoran Desert Alliance** an Arizona non-profit corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

State of Arizona        )  
                                   ) ss.  
 County of Pima        )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by, \_\_\_\_\_  
 \_\_\_\_\_ as \_\_\_\_\_ of **International Sonoran Desert Alliance**, an Arizona non-profit corporation.

\_\_\_\_\_ Notary Public

My commission will expire: \_\_\_\_\_

ACCEPTED AND APPROVED BY:

\_\_\_\_\_  
 Director, Pima County Community Development &  
 Neighborhood Conservation Department

**ATTACHMENT A**

**GRANT AGREEMENT  
(Pima County Contract No. CT – CD 18\*0411)**

**Excluding EXHIBITC**