



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

**Requested Board Meeting Date:** 9/15/2015

**or Procurement Director Award** ☐

**Contractor/Vendor Name:** Old Pueblo Community Services  
(DBA):

**Project Title/Description:**  
Sparkman House, Facility Improvements

**Purpose:**  
Provide safe, Healthy and green energy efficient facility improvements

**Procurement Method:**  
RFP-HCD/PCD CDBG 112114 Safe, Healthy and Green Enviroments for Transitional and Shelter Housing

**Program Goals/Predicted Outcomes:**  
Provide safe, healthy and green energy efficient facility improvements at 2443 N. Sparkman Blvd  
Goal: To provide a suitable living environment by reducing operational costs and increasing energy efficiencies at the Facility which provides emergency, transitional or permanent housing and support services for homeless and special populations.

Predicted outcomes: An increase in the availability and accessibility to transitional housing and support services for homeless veterans and their families.

**Public Benefit:**  
Upon completion, the Project will meet the CDBG National Objective to provide public facility improvements that benefit the provision of housing to low/moderate income persons.

**Metrics Available to Measure Performance:**  
At least **twenty-four (24) individuals per year** will have improved access to services at the Facility as reported to HUD.

Annual reductions in expenditures for Facility's utilities, operations, and maintenance costs will be realized.

**Retroactive:**  
Yes, delay in receiving signed copy of contract from agency. Contract not returned until 8/17/15.

**Original Information**

Document Type: CT Department Code: CD Contract # (i.e.,15-123): 16000000000000000023

Effective Date: 8/1/2015 Termination Date: 7/30/2016 Prior Contract Number (Synergen/CMS):

☒ Expense Amount: \$56,000 ☐ Revenue Amount: \$

Funding Source(s): U.S. Deparment of Housing and Urban Development (HUD)

Cost to Pima County General Fund: \$0

Contract is fully or partially funded with Federal Funds? ☒ Yes ☐ No ☐ Not Applicable to Grant Awards

Were insurance or indemnity clauses modified? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards

Vendor is using a Social Security Number? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards

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

**Amendment Information**

To: COB - 9-2-15 (1)  
Pgs - 22 Ver. - 1

Procure Dept 08/31/15 10:16

Document Type: Department Code: Contract Number (i.e., 15-123):  
Amendment No.: AMS Version No.:  
Effective Date: New Termination Date:  
☐Expense ☐Revenue ☐Increase ☐Decrease Amount This Amendment:  
Funding Source(s):  
Cost to Pima County General Fund: \$

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Contact: Gloria Soto, Program Coordinator

Department: Community Development & Neighborhood Conservation Telephone: 724-3751

Department Director Signature/Date: Margaret M. Kim 08/26/2015

Deputy County Administrator Signature/Date: [Signature] 8-27-15

County Administrator Signature/Date: C. Duckelbury 8/27/15  
(Required for Board Agenda/Addendum Items)

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[illegible]

<b>Program/Project Name:</b>	Sparkman House, Facility Improvements CDBG Emergency/Transitional/Permanent Housing Repair Program
<b>Subrecipient:</b>	Old Pueblo Community Services 4501 E. Fifth Street Tucson, AZ 85711
<b>DUNS No.:</b>	182889076
<b>Project Description:</b>	Funds will be used to provide safe, healthy and green energy-efficient facility improvements at Subrecipient's transitional housing units located at 2443 N. Sparkman Blvd, Tucson, AZ.
<b>Contract Term:</b>	<u>August 1, 2015</u> , or upon execution by Pima County Board of Supervisors, whichever is later, through <u>July 30, 2016</u> .
<b>Amount:</b>	\$56,000.00
<b>Funding:</b>	U.S. Department of Housing and Urban Development
<b>Federal Contract No.</b>	B-14-UC-04-0502
<b>Award Date:</b>	7/1/2014

CFDA	Program Description	National Funding	Pima County Award
14.218	Community Development Block Grant/ Entitlement Communities (CDBG)	FY 14 est. \$1,948,870,000.00	\$2,498,848.00

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

This Agreement is entered into by and between Pima County, a body politic and corporate of the State of Arizona ("County") and Old Pueblo Community Services, a non-profit in the State of Arizona ("Subrecipient").

## 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 applied for and received Community Development Block Grant (“CDBG”) funds in the amount of \$2,498,848.00 from the U.S. Department of Housing and Urban Development (“HUD”), under Title I of the Housing and Community Development Act of 1974, as amended (Public Law 93-383).
- C. On May 6, 2014, the Pima County Board of Supervisors approved the use of CDBG funds for an Emergency/Transitional/Permanent Housing Repair Program in the 2014-2015 Annual Action Plan COUNTY submitted to HUD.

- D. County partnered with City of Tucson to issue a request for proposals ("the RFP") solicitation number HCD/PCD CDBG 112114 Safe, Healthy and Green Environments for Transitional and Shelter Housing for proposals to qualify for CDBG funding during Federal Fiscal Year 2014-2015.
- E. Subrecipient submitted a response to the RFP.
- F. County has determined that the services or activities proposed in Subrecipient's response to the RFP are eligible for CDBG funding and in the best interests of the residents of Pima County.
- G. CDBG funds in the amount of **\$56,000.00** have been allocated to SUBRECIPIENT for the safe, healthy and green energy-efficient facility improvements.

NOW THEREFORE, COUNTY and SUBRECIPIENT, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

## **1.0 TERM AND EXTENSIONS**

- 1.1 This Agreement will commence on August 1, 2015 or upon execution by the Pima County Board of Supervisors, whichever is later and will terminate on July 31, 2016, unless sooner terminated or further extended pursuant to the provisions of this Agreement. County will have the option to renew this Agreement for up to one (1) 12-month period or any portion thereof.
- 1.2 Except as set forth in Paragraph 1.4 below, any modification or extension of the contract termination date must be by formal written amendment executed by the parties hereto.
- 1.3 Any amendments to the Agreement must be approved by the County before any services under the amendment commences.
- 1.4 Minor modifications may be made by written memorandum approved and signed by the Director of the Pima County Community Development and Neighborhood Conservation Department or designee. Minor modifications are changes in the scope or budget, which do not change the specified purpose, outcomes or the total compensation provided through this Agreement and do not in any way increase the direct or indirect liability of the County under this Agreement.
- 1.5 Notwithstanding paragraph 1.1 above, the terms of this Agreement will survive and remain in effect during any period that Subrecipient has control over CDBG funds, including program income.

## **2.0 SCOPE OF SERVICES**

- 2.1 Subrecipient 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 Agreement services will:
    - 2.1.4.1 Be employees or volunteers of the Subrecipient;
    - 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 Subrecipient.
  - 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.

2.1.7 Undertake the same obligations to the County, as County does to HUD pursuant to the 2014 - 2015 Annual Action Plan and assurances. Subrecipient will hold County harmless against any injury that County may suffer with respect to HUD on account of any failure on the part of Subrecipient to fulfill obligations to HUD.

**2.2 Confidentiality. Subrecipient:**

2.2.1 Understands that 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 County's or Subrecipient's responsibilities with respect to 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.

2.2.2 Will provide access to these files only to persons properly authorized.

2.2.3 Will observe and abide by all applicable State and Federal statutes and regulations regarding use or disclosure of information including, but not limited to, information concerning applicants for and recipients of contract services.

2.3 Subrecipient 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.

2.4 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 Subrecipient and any subcontracted parties relating to performance of duties and obligations under this Agreement to ensure that Subrecipient 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 For monitoring and evaluation, Subrecipient must provide source documentation for payroll which may include, but is not limited to:

3.2.1 Employment letters;

3.2.2 Authorization for rates of pay, benefits, and withholding;

3.2.3 Minutes from Board of Directors' meetings establishing salary schedules and benefit packages;

3.2.4 Copies of written policies;

3.2.5 W-4 forms and associated time and attendance records;

3.2.6 Employee certifications of time spent:

3.2.6.1 If an employee of Subrecipient works solely on the services being funded by CDBG, the employee and the employee's supervisor must sign a statement every six months certifying that the employee worked only on the CDBG-funded services.

3.2.6.2 If an employee's time is split between the services being funded by CDBG and non-CDBG services and funding sources, Subrecipient must have time distribution records supporting the allocation of charges among the various funding sources.

- 3.3 Subrecipient must cooperate in the monitoring and evaluation process by County and/or HUD.
- 3.4 Subrecipient must assist County in providing reports and documentation related to Subrecipient's performance and, where applicable, the impact of the CDBG-funded activities on the community, to HUD.
- 3.5 If monitoring and evaluation finds that Subrecipient's performance is substandard, Subrecipient will be in default of this Agreement. If Subrecipient 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.
- 3.6 To the greatest extent permissible by law, County, and any authorized federal, state or local agency, including, but not limited to, the U.S. Department of Housing and Urban Development, and the Comptroller of the United States will at all reasonable times have the right of access to Subrecipient'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 Subrecipient's performance and Subrecipient'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 utilize CDBG funds **up to \$56,000.00** ("the Maximum Allocated Amount") for improvements to Subrecipient's facility.
- 4.2 Only the CDBG funds County has received from the U.S. Department of Housing and Urban Development ("the awarding agency") will be used.
- 4.3 Use of the full Maximum Allocated Amount is subject to the CDBG 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.
- 4.4 **Funds may not supplant funds otherwise available** for the improvements described in **Exhibit A**. Subrecipient 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.
- 4.5 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 20.0 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 Subrecipient will generate program income, as defined by the awarding agency, will be generated under the activities of this Agreement.
- 5.2 In the event that activities under this Agreement do generate program income or program income is authorized, Subrecipient must:
  - 5.2.1 Subrecipient must report to County all program income, as defined at 24 CFR 570.500(a), generated and received as a result of activities carried out with the CDBG-funds provided pursuant to this Agreement. These reports are due quarterly.
  - 5.2.2 Return program income to County within 15 days of the end of each month, unless otherwise specified in **Exhibit A**.

## 6.0 INSURANCE

6.1 Pima County in no way warrants that the minimum limits contained herein are sufficient to protect the Subrecipient from liabilities that might arise out of the performance of the work under this Agreement by the Subrecipient, its agents, representatives, employees or subcontractors, and Subrecipient is free to purchase additional insurance.

6.2 Minimum Scope and Limits of Insurance: Subrecipient must have coverage with limits of liability not less than those stated below.

### 6.2.1 Commercial General Liability – Occurrence Form

6.2.1.1 Policy must include bodily injury, property damage, personal injury and broad form contractual liability.

General Aggregate	\$2,000,000.00
Products – Completed Operations Aggregate	\$1,000,000.00
Personal and Advertising Injury	\$1,000,000.00
Blanket Contractual Liability – Written and Oral	\$1,000,000.00
Fire Legal Liability	\$ 50,000.00
Each Occurrence	\$1,000,000.00

6.2.1.2 Policy must be endorsed to **include coverage for sexual abuse and molestation.**

6.2.1.3 Policy must be endorsed to include the following additional insured language:  
**“Pima County is named an additional insured with respect to liability arising out of the activities performed by or on behalf of the Primary Insured”.**

6.2.1.4 Policy must contain a waiver of subrogation against Pima County, its departments, agencies, boards, commissions, and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Subrecipient.

6.2.2 Automobile Liability: Policy must include bodily Injury and property damage for any owned, hired, and/or non-owned vehicles used in the performance of this Agreement.

6.2.2.1 Combined Single Limit (CSL) \$1,000,000.00

6.2.2.2 Policy must be endorsed to include the following additional insured language: **“Pima County is named an additional insured with respect to liability arising out of the activities performed by or on behalf of the Subrecipient, involving automobiles owned, leased, hired or borrowed by the Subrecipient”.**

6.2.2.3 Policy must contain a waiver of subrogation against Pima County, its departments, agencies, boards, commissions and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Subrecipient.

### 6.2.3 Worker's Compensation and Employers' Liability

6.2.3.1 Workers' Compensation Amount required by statute

6.2.3.2 Employers' Liability:

Each Accident	\$ 500,000.00
Disease – Each Employee	\$ 500,000.00
Disease – Policy Limit	\$1,000,000.00

6.2.3.3 Policy must contain a waiver of subrogation against Pima County, its departments, agencies, boards, commissions and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Subrecipient.

6.2.3.4 This requirement will not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

6.3 Additional Insurance Requirements: The policies must contain, or be endorsed to contain, the following provisions:

6.3.1 Pima County, wherever additional insured status is required, will be covered to the full limits of liability purchased by Subrecipient, even if those limits of liability are in excess of those required by this Agreement.

6.3.2 Subrecipient's insurance coverage will be primary insurance and non-contributory with respect to all other available sources.

6.3.3 Coverage provided by the Subrecipient will not be limited to the liability assumed under the indemnification provisions of this Agreement.

6.3.4 The Project Name/Agreement Number and project description must be noted on the Certificate of Insurance.

6.3.5 All Certificates of Insurance are to be received and approved by Pima County before work commences.

6.4 Notice of Cancellation: Each insurance policy required by the insurance provisions of this Agreement must provide the required coverage and must not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Pima County. Such notice must be sent directly to the **Department Director, Community Development and Neighborhood Conservation, 2797 E. Ajo Way, Tucson, AZ 85713** by certified mail, return receipt requested.

6.5 Acceptability of Insurers: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona and County in no way warrant that the above-required minimum insurer rating is sufficient to protect the Subrecipient from potential insurer insolvency.

6.6 Approval and Modifications: Pima County Risk Management reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Agreement amendment but may be made by administrative action.

## 7.0 INDEMNIFICATION

7.1 Subrecipient will indemnify, defend, and hold harmless County, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by the Subrecipient, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of this Agreement.

7.2 Subrecipient warrants that services provided under this Agreement are non-infringing. Subrecipient will indemnify, defend and hold County harmless from any claim of infringement arising from services provided under this Agreement or from the provision, license, transfer or use for their intended purpose of any products provided under this Agreement.

## 8.0 COMPLIANCE WITH LAWS

8.1 Subrecipient will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. 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. 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 Subrecipient will comply with the requirements of 24 CFR 570, including subpart K of these regulations, except the Subrecipient does not assume:
  - 8.2.1 County's environmental responsibilities described in 24 CFR 570.604; and
  - 8.2.2 County's responsibility for initiating the review process under the provisions of 24 CFR Part 52.
- 8.3 Subrecipient warrants that CDBG funds provided or personnel employed in the administration of the program funded under this Agreement will not be used for:
  - 8.3.1 Political activities;
  - 8.3.2 Inherently religious activities;
  - 8.3.3 Lobbying;
  - 8.3.4 Political patronage; or
  - 8.3.5 Nepotism activities.
- 8.4 Subrecipient will comply with the applicable provisions of:
  - 8.4.1 Davis-Bacon Act (Public Law 107-217), as amended;
  - 8.4.2 Contract Work Hours and Safety Standards Act (40 USC 327 *et seq.*);
  - 8.4.3 Copeland Anti-Kick Back Act (18 USC 874 *et seq.*);
  - 8.4.4 Section 3 of the HUD Act of 1968 as amended; and
  - 8.4.5 All rules and regulations applicable to the Acts set forth above.
- 8.5 Subrecipient 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**

The status of Subrecipient will be that of an independent contractor. Neither Subrecipient nor Subrecipient's officers, agents, or employees will be considered an employee of Pima County or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. Subrecipient will be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Agreement and will indemnify and hold County harmless from any and all liability which County may incur because of Subrecipient's failure to pay such taxes. Subrecipient will be solely responsible for its program development, operation, and performance.

## **10.0 SUBCONTRACTORS**

- 10.1 Except as provided in paragraph 10.2, Subrecipient will not enter into any subcontracts for any services to be performed under this Agreement without County's prior written approval of the subcontract. Subrecipient 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 Subrecipient's performance under this Agreement.

- 10.3 Subrecipient 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 Subrecipient 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.
- 10.4 Subrecipient must include the provision set forth in paragraph 3.6 in all contracts between Subrecipient and its subcontractors providing goods or services pursuant to this Agreement. Subrecipient 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**

Subrecipient will not assign its rights to this Agreement in whole or in part, without prior written approval of the County. Approval may be withheld at the sole discretion of the County, provided that such approval will not be unreasonably withheld.

## **12.0 NON-DISCRIMINATION**

- 12.1 Subrecipient agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors.
- 12.2 During the performance of this contract, Subrecipient 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**

Subrecipient 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 Subrecipient is carrying out a government program or services on behalf of County, then Subrecipient 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**

Subrecipient 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 Subrecipient 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 Subrecipient 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 Termination for Convenience: County reserves the right to terminate this Agreement at any time and without cause by serving upon Subrecipient thirty (30) days advance written notice of such intent to terminate. In the event of such termination, the County's only obligation to Subrecipient will be payment for services rendered prior to the date of termination.
- 17.2 Insufficient Funds: Notwithstanding Paragraph 17.1 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 Subrecipient for more than the reduced amount. In the event of a termination under this paragraph, County's only obligation to Subrecipient will be payment for services rendered prior to the date of termination to the extent that grant funds are available.
- 17.3 Termination for Cause: This Agreement may be terminated at any time without advance notice and without further obligation by the County when the Subrecipient is found by County to be in default of any provision of this Agreement.
- 17.4 Non-Appropriation: Notwithstanding any other provision in this Agreement, this Agreement may be terminated if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Agreement. In the event of such termination, County will have no further obligation to Subrecipient, other than for services rendered prior to termination.
- 17.5 Suspension: County reserves the right to suspend Subrecipient's performance and payments under this Agreement immediately upon notice delivered to Subrecipient's designated agent in order to investigate Subrecipient's activities and compliance with this Agreement. In the event of an investigation by County, Subrecipient 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, Subrecipient will be notified in writing that the contract will be immediately terminated or that performance may be resumed.

## **18.0 NOTICE**

- 18.1 Subrecipient 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 and  
Neighborhood Conservation  
2797 E. Ajo Way  
Tucson, AZ 85713

**Subrecipient:**

Thomas M. Litwicki, Chief Executive Officer  
Old Pueblo Community Services  
4501 E. Fifth Street  
Tucson, AZ 85711

**19.0 OTHER DOCUMENTS**

- 19.1 In entering into this Agreement, Subrecipient and County have relied upon information provided in Subrecipient's proposal submitted in response to Pima County Solicitation identified in the recitals of this Agreement ("the RFP") including the Instructions to Bidders, Standard Terms and Conditions, Specific Terms and Conditions, Solicitation Addenda, Subrecipient's Proposal, other information and documents submitted by the Subrecipient in its' response to said 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. Subrecipient will promptly bring any provisions which Subrecipient believes are inconsistent to County's attention, and County will provide Subrecipient 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 Subrecipient 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 CDBG program;
  - 20.1.3 Eligibility documentation and determination;
  - 20.1.4 Documentation of compliance with the fair housing and equal opportunity components of the CDBG 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 Subrecipient 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 CDBG-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 Subrecipient 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 Subrecipient 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 Subrecipient grant budget approved by County.

### 21.2 Subrecipient status:

- 21.2.1 If Subrecipient is a "nonprofit corporation" that meets the definition of "corporation" in A.R.S. §10-3140, Subrecipient 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 Subrecipient meets or exceeds the single audit threshold set forth in 2 C.F.R. Part 200, Subrecipient 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 Subrecipient's fiscal year.

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

Denise Sauer, Contract Specialist  
Pima County Community Development and Neighborhood Conservation  
2797 E. Ajo Way  
Tucson, AZ 85713

## 22.0 COPYRIGHT

Neither, Subrecipient 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 Subrecipient 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. Subrecipient is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. Subrecipient 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 Subrecipient's contact with all Federal, State and local agencies that provide funding for this Agreement.

### **26.0 PUBLIC INFORMATION**

- 26.1 Pursuant to Arizona Public Records law, A.R.S. § 39-121 *et seq.*, documents submitted by Subrecipient to County may be considered public records and may be subject to release to any member of the public. Records subject to release may include, but are not limited to: pricing, product or program specifications, work plans, and any supporting data.
- 26.2 In the event that County receives a public records request pursuant to A.R.S. § 39-121 *et seq.* for documents Subrecipient submitted to County, County will notify Subrecipient on the same day the request is made or as soon as possible thereafter.
- 26.3 County will release Subrecipient's records ten (10) business days after the date of notice to the Subrecipient, unless Subrecipient has secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release will not be counted in the time calculation.
- 26.4 County will not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records submitted to County by Subrecipient nor will County be in any way financially responsible for any costs associated with securing such an order.

### **27.0 ELIGIBILITY FOR PUBLIC BENEFITS**

Subrecipient 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.

### **28.0 LEGAL ARIZONA WORKERS ACT COMPLIANCE**

- 28.1 Subrecipient hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to Subrecipient's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Subrecipient will further ensure that each subcontractor who performs any work for Subrecipient under this contract likewise complies with the State and Federal Immigration Laws.
- 28.2 County will have the right at any time to inspect the books and records of Subrecipient and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

- 28.3 Any breach of Subrecipient's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, will be deemed to be a material breach of this Agreement subjecting Subrecipient 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, Subrecipient 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, (subject to County approval if Minority and Women Business E preferences apply) as soon as possible so as not to delay project completion.
- 28.4 Subrecipient will advise each subcontractor of County's rights, and the Subcontractor's obligations, under this Article (or Section?) 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."

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

## **29.0 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.

## **30.0 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.

## **31.0 NON-EXCLUSIVE AGREEMENT**

Subrecipient 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.

## **32.0 ENTIRE AGREEMENT**

- 32.1 This document constitutes the entire agreement between the parties pertaining to the subject matter hereof.
- 32.2 No verbal agreements or conversations with any officer, agent or employee of County prior to or after the execution of this Agreement will affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement will be considered as unofficial information and in no way binding upon County and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.

32.3 This Agreement may be modified, amended, altered or extended only by a written amendment signed by the parties.

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

**PIMA COUNTY**

\_\_\_\_\_  
Chair, Board of Supervisors

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

ATTEST

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

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


**OLD PUEBLO COMMUNITY SERVICES**

  
\_\_\_\_\_  
Signature

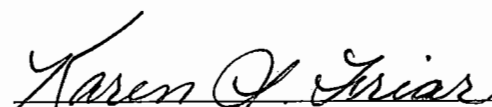
THOMAS LITWICKI, CEO  
\_\_\_\_\_  
Printed name and title

Date: 8-17-15

APPROVED AS TO CONTENT:

 07/24/2015  
\_\_\_\_\_  
Director, Community Development  
and Neighborhood Conservation

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Karen S. Friar, Deputy County Attorney



**SCOPE OF WORK****1. Project Title and Location:**

Sparkman House, 2443 N. Sparkman Boulevard, Tucson, AZ 85716 ("the Facility"); a four unit and office transitional housing facility operated by Old Pueblo Community Services.

**2. Project Purpose:**

Provide energy-efficiency improvements to the Facility to reduce expenditures for utilities, operations, and maintenance.

**3. Project Activities:****3.1. COUNTY will:**

- 3.1.1. Utilize CDBG funding allocated for the Project, in accordance with the terms of the 2014-2015 Annual Action Plan ("Plan") to make the needed improvements at the Facility.
- 3.1.2. Procure and engage licensed contractors to complete the Project. Procurement will be conducted in accordance with Pima County Procurement Code and Federal labor standards provisions including Davis-Bacon wage and reporting requirements and any other applicable HUD regulations.
- 3.1.3. Ensure that the contractors:
  - 3.1.3.1. Repair, cap and seal roof;
  - 3.1.3.2. Make following energy efficient upgrades for the four housing units and office, including but not limited to:
    - 3.1.3.2.1. Replace 14 existing windows with dual pane windows;
    - 3.1.3.2.2. Replace one (1) existing sliding door;
    - 3.1.3.2.3. Replace four (4) air conditioning units with energy efficient systems;
    - 3.1.3.2.4. Upgrade electrical service as necessary; and
    - 3.1.3.2.5. Install insulation and drywall.
- 3.1.4. Deliver project and manage construction activities, including scheduling and inspecting work.
- 3.1.5. Retain copies of all executed contracts for the scope of work, change orders and on-site inspections.
- 3.1.6. Consult with Subrecipient and approve all work conducted for the Project prior to Project closeout.

**3.2. Subrecipient will:**

- 3.2.1. Retain title to and operate the facility to serve veterans and their families for a period of five (5) years following the completion of the Project. This provision will survive the termination of this Agreement. The following conditions apply to secure such performance:
  - 3.2.1.1. In the event Subrecipient fails to adhere to this provision, Subrecipient will reimburse COUNTY for the total amount of CDBG funds expended for the Project.

- 3.2.1.2. Subrecipient will execute a Deed of Trust contained in Exhibit B in the amount of **\$56,000.00** to secure such performance. The executed Deed of Trust is incorporated into and made a part of this Agreement as if set forth in full herein.
- 3.2.2. Provide transitional housing and support services to veterans and their families at the Facility for a minimum five years after completion of the Project. Services to be provided include, but are not limited to:
  - 3.2.2.1. Housing;
  - 3.2.2.2. Case management and mentoring;
  - 3.2.2.3. Job development;
  - 3.2.2.4. Financial education; and
  - 3.2.2.5. Substance abuse and behavioral health counseling.
- 3.2.3. Allow all contractors procured by County to access the Facility during normal business hours.
- 3.2.4. Cooperate with COUNTY and contractors to schedule work outside of business hours, if needed to timely complete the Project.

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

- 4.1. Goal: To provide a suitable living environment by reducing operational costs and increasing energy efficiencies at the Facility which provides emergency, transitional or permanent housing and support services for homeless and special populations.
- 4.2. Predicted outcomes: An increase in the availability and accessibility to transitional housing and support services for homeless veterans and their families.

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

Upon completion, the Project will meet the CDBG National Objective to provide public facility improvements that benefit the provision of housing to low/moderate income persons.

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

- 6.1. At least **twenty-four (24) individuals per year** will have improved access to services at the Facility as reported to HUD.
- 6.2. Annual reductions in expenditures for Facility's utilities, operations, and maintenance costs will be realized.

**7. Reports:**

- 7.1. Upon Completion of the Project, Subrecipient will provide the following reports:
  - 7.1.1. Annual Project Report for HUD for fiscal years 2015-2016 through 2020-2021. Report must include, but is not limited to, the following:
    - 7.1.1.1. Community impact narrative;
    - 7.1.1.2. Demographic information regarding the veterans served each year; and
    - 7.1.1.3. Additional monies obtained to maintain and further improve the Facility.

7.1.2. Energy Cost Savings Analysis:

7.1.2.1. Monthly utility costs for fiscal year 2014-2015 prior to completion of the energy efficient improvements.

7.1.2.2. Summary of annual utility costs for fiscal years 2015-2016, 2016-2017, 2017-2018, and 2018-2019 are due on July 31 of each year for the previous year's costs.

7.2. All reporting provisions will survive the termination of this Agreement.

8. **Budget:**

<b>Facility Improvements</b>	<b>Budget</b>
Roof repair and recoating	\$3,400.00
Office	\$7,223.00
Unit 2437	\$11,742.00
Unit 2439	\$12,620.00
Unit 2441	\$9,366.00
Unit 2443	\$8,776.00
Project Delivery (Pima County)	\$2,891.00
<b>Total</b>	<b>\$56,000.00</b>

END OF EXHIBIT A

When recorded, return to:

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

### PERFORMANCE DEED OF TRUST AND ASSIGNMENT OF RENTS

**DATE:** \_\_\_\_\_, 2015

**TRUSTOR:** Old Pueblo Community Services, an Arizona corporation whose mailing address is:

4501 E. 5<sup>th</sup> Street  
Tucson, AZ. 85711

**TRUSTEE:** Lawyers Title of Arizona, Inc., an Arizona Corporation  
whose mailing address is:

450 W. Redondo  
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 CDBG Program  
2797 E. Ajo Way, 3<sup>rd</sup> Floor  
Tucson, Arizona 85713

**TRUST PROPERTY:** Property situated in Pima County, Arizona, described as follows (the "Property"):

**FRUITVALE S120' OF LOT 10 BLK 2**

Together with all buildings, improvements and fixtures thereon or hereafter erected thereon.

The street addresses or identifiable location of the Property is:

2443 N. Sparkman Blvd

Pima County Tax Parcel ID Number:

111-07-0360

This Deed of Trust is made on the above date, by and between and among the Trustor, Trustee and Beneficiary above named.

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 hereinafter called "**Property Income**"):

**SUBJECT**, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income, and further subject to 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.

**FOR THE PURPOSE OF SECURING:**

- A. Performance of the terms of the Pima County CDBG Program funding contract, Pima County Contract No. \_\_\_\_\_, between Beneficiary and Trustor (the "*Agreement*"), pursuant to which County will provide up to \$56,000.00 of CDBG funds for facility improvements of the building owned and operated by Trustor.
- B. Trustor's obligation pursuant to Section 2.3.4 of the *Agreement* to retain title to and operate the Property as a facility to provide services for low-to-moderate income persons for a period of five (5) years following the completion of the construction done pursuant to the Agreement.

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:**

- 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.
- 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.
- 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. 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.

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 and recover the same from Trustor.

5. To 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 debt secured by this Deed of Trust and a lien on the Property or immediately due and payable at option of Beneficiary or Trustee.
6. 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.
7. 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.
8. That at any time or from time to time, and without notice, upon written request of Beneficiary and presentation of this Deed of Trust for endorsement, and without liability therefor, and without affecting the personal liability of any person for performance of the obligations secured hereby, and without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, the Trustee may: (a) release and reconvey all or any part of the Property; (b) consent to the making and recording, or either, of any map or plat of the Property or any part thereof; (c) join in granting any easement thereon; (d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance, or charge hereof.
9. That upon written request of Beneficiary stating that the performance required hereby has been discharged, and upon surrender of this Deed of Trust 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".
10. 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 the Property Income, reserving to Trustor the right, prior to any default by Trustor in performance of the obligations secured hereby to collect and retain such Property 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 performance hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect such Property 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 performance secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such Property 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.
11. That upon default by Trustor in (a) the performance of any obligation in the *Agreement*, or (b) in performance of any agreement hereunder, Beneficiary may, after giving written notice of default to Beneficiary and upon Beneficiary's failure to cure such default within ten (10) days of such notice for non-performance of any obligation of the Agreement or within sixty (60) days of such notice for any other default, declare all sums secured hereunder immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature of the default, and of election to cause the Property to be sold under this Deed of Trust.

Trustee will record and give notice of Trustee's sale in the manner required by law. After the lapse of such time as may then be required by law, subject to the statutory rights of reinstatement, the Trustee will sell, in the manner required by law, the Property at public auction at the time and place stated in the notice of Trustee's 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 will deliver to any purchaser its Deed conveying the Property so sold, but without any covenant or warranty, expressed or implied. Any person, including Trustor, Trustee, or Beneficiary, may purchase the Property at such sale.

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 and costs, Trustee will apply the proceeds of sale to any sums due under the terms hereof, 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. In lieu of sale pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary also has all other rights and remedies available hereunder and at law or in equity. All rights and remedies under this Deed of Trust are cumulative.

12. That Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein will, without conveyance from the predecessor Trustee, succeed to all the predecessor Trustee's title, estate, rights, powers, and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor, by registered or certified mail, and by recordation of a Notice of Resignation of Trustee in the Office of the County Recorder in each county in which the Property or some part thereof is situated.
13. That this Deed of Trust applies to, inures to the benefit of, and binds all parties thereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" means the owner and holder of the Agreement the performance of which is secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.
14. That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. 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 is a party unless brought by Trustee.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**SIGNATURES ON FOLLOWING PAGE**

Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to Trustor at Trustor's address hereinbefore set forth.

TRUSTOR:

Old Pueblo Community Services, an Arizona corporation

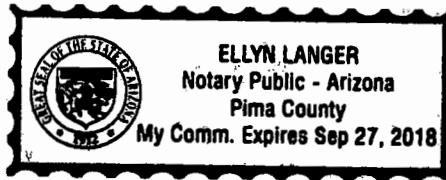
By: [Signature]

Title: CEO

State of Arizona )

) ss.

County of Pima )



This instrument was acknowledged before me this 17<sup>th</sup> day of August, 2015, by  
Tom Litwacki, as CEO of Old Pueblo Community  
Services, an Arizona corporation.

[Signature] Notary Public

My commission will expire: September 27, 2018

ACCEPTED AND APPROVED BY:

Margaret M. Kue 08/27/2015  
Director, Pima County Community Development  
and Neighborhood Conservation Department