

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

**Requested Board Meeting Date:** 12/13/2016

**or Procurement Director Award**

**Contractor/Vendor Name:** Pima County Community Land Trust  
**(DBA):** PCCLT

**Project Title/Description:**  
Ontario Rental Housing Project

**Purpose:**  
Contract will provide General Obligation Bond proceeds to fund new, affordable rental, in-fill housing for low-income families and staff requests approval for the Board Chair to sign the Performance Deed of Trust included in the Contract at Exhibit C.

**Procurement Method:**  
Board Approval of Housing Commission's recommendations on May 3, 2016.

**Program Goals/Predicted Outcomes:**  
Promote affordable rental housing for large, low-income families in an economically disadvantaged neighborhood (Barrio Hollywood).

**Public Benefit:**  
Provide new, energy-efficient, affordable, quality single family rental homes coupled with stewardship programs provided by the Pima County Community Land Trust to the tenants.

**Metrics Available to Measure Performance:**  
Benefit to six (6) low income households.

**Retroactive:**  
No

PC 051640855PC CLK OF BO

**Original Information**

Document Type: CT      Department Code: CD      Contract # (i.e.,15-123): 1700000000000000197

Effective Date: 1/1/2017      Termination Date: 12/31/2018      Prior Contract Number (Synergen/CMS):

Expense Amount: \$400,000.00       Revenue Amount: \$

Funding Source(s): Affordable Housing General Obligation Bonds

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**

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: Denise Sauer, Contract Specialist 4-2772/Marcos Ysmael, Community Development Housing  
Planner III 724-2462

Department: Community Development & Neighborhood Conservation Telephone: 724-2462

Department Director Signature/Date: Mayores M. Kuc 11/21/2016

Deputy County Administrator Signature/Date: JWR 11/22/2016

County Administrator Signature/Date: C. Deuelbey 11/23/16  
*(Required for Board Agenda/Addendum Items)*

## SITTING AS THE BOARD OF SUPERVISORS

### COMMUNITY DEVELOPMENT AND NEIGHBORHOOD CONSERVATION

9.

#### **Affordable Housing Bond Projects**

The Pima County Housing Commission and staff recommend approval of the following projects and authorization to begin the contract process, 2004 Bond Fund.

TMMFS Senior Housing Project \$545,000.00 (District 5);

The Marist on Cathedral Square \$604,989.00 (District 2);

The Sonora Project \$100,000.00 (District 5);

The Ontario Project \$400,000.00 (District 5);

The Linda Avenue House Restoration Project \$253,778.00 (District 5)

approve

10.

#### **Annual Action Plan**

RESOLUTION NO. 2016 - 32, of the Board of Supervisors, to approve submission of the Annual Action Plan 2016-2017 to the U.S. Department of Housing and Urban Development.

#### **FY 2016/2017 Pima County Community Development Block Grant (CDBG) Program**

##### **Applicant/Program/District/Activity/16-17 Request/Recommendation**

Ajo - International Sonoran Desert Alliance/Save the Ajo Plaza/3/pf/\$55,000/\$0

Ajo - International Sonoran Desert Alliance/Ajo Builds/3/hsg/\$40,000/\$40,000

Ajo - International Sonoran Desert Alliance/Ajo Works/3/ps/\$35,000/\$20,000

Ajo - Sun and Sage Productions/Life Enrichment - Poverty Intervention - Provide a Public Benefit Through Employment and Counseling/3/pf/\$46,950/\$0

Ajo - WALD, Inc./Ajo Youth Sports/3/pf/\$40,000/\$40,000

Ajo Ambulance, Inc./EMS Training Program/3/pf/\$150,000/\$0

Ajo Center for Sustainable Agriculture/"Adopt-a-Sonoran-Desert-Crop" Program:

Preserving Agro-biodiversity Through Citizen Participation/3/ps/\$60,044/\$20,000

Ajo/Gibson Volunteer Fire Department/Ajo Fire New Turnout Gear/3/pf/\$77,037/\$0

Amado - Pasadera Behavioral Health Network, Inc./Amado Youth Center Building Improvements/3/pf/\$37,850/\$30,000

Amado - Pasadera Behavioral Health Network, Inc./Amado Teen Center Project/3/ps/\$43,200/\$0

Arivaca Community Center Inc./Wetlands solution to Sewage

Issue/3/pf/\$45,000/\$125,000

Arivaca Coordinating Council - Arivaca Human Resources/Arivaca Coordinating

Council - Arivaca Human Resources/3/pf/\$59,500/\$0

Avra Valley Fire District/Firefighter and Station Equipment, Upgrades, and Maintenance/3/infra/\$100,000/\$0

Avra Water Co-op, Inc./Aging Meter Replacement - MXU Install

Program/3/infra/\$100,000/\$20,000

Avra Water Co-op, Inc./Pipeline Replacement Program/3/infra/\$32,750/\$0

Drexel Heights Fire District/Fire Hydrants/3,5/infra/\$27,000/\$10,000

Drexel Heights Fire District/Family Safety Program/3,5/ps/\$11,560/\$11,560

Drexel Heights - Southwest Community Center/South West Community Center Land acquisition/5/infra/\$20,000/\$0

Drexel Heights - Southwest Community Center/Happy Food

Program/all-5/ps/\$10,000/\$10,000

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

**PROJECT:** THE ONTARIO RENTAL HOUSING  
PROJECT

**DEVELOPER:** The Pima County Community Land Trust  
801 W. Congress Street  
Tucson, AZ 85745

**CONTRACT TERM:** January 1, 2017 to December 31,  
2018

**AMOUNT:** \$400,000.00

**FUNDING:** 2004 Neighborhood Reinvestment General  
Obligation Bond Sale Proceeds

**CONTRACT**

**NO.** CT-CD-17-197

**AMENDMENT NO.** \_\_\_\_\_

This number must appear on all  
invoices, correspondence and  
documents pertaining to this  
contract.

This Contract is entered into by and between Pima County, a body politic and corporate of the State of Arizona ("County") and The Pima County Community Land Trust ("Contractor" or "Developer").

**RECITALS**

- A. In an election held on May 18, 2004 (2004 Special Bond Election), Pima County voters authorized the sale of bonds and use of proceeds for, *inter alia*, acquiring, developing, expanding, improving and equipping new and existing facilities to further the health, education, welfare and safety of the citizens of the County, including, without limitation, housing and other improvements and facilities to further neighborhood reinvestment.
- B. In compliance with Pima County Code Chapter 3.06, titled Bonding Disclosure, Accountability and Implementation, the Board of Supervisors adopted Ordinance No. 2004-18, the Bond Implementation Plan, May 18, 2004 Special Election (the "2004 Bond Ordinance").
- C. Section VII(B)(1)(c)(2.10) of the 2004 Bond Ordinance allocates ten million dollars (\$10,000,000.00) in bond proceeds to be issued for investment in projects that expand home ownership opportunities and provide access to affordable housing for low-income residents of Pima County. Pursuant to A.R.S. § 11-381, County is using these funds to assist with affordable housing projects being carried out by others.
- D. Pima County Community Development and Neighborhood Conservation Department, in conjunction with the Pima County Housing Commission, solicited applications and conducted an evaluation process to select qualified projects involving the construction, rehabilitation, or preservation of housing that is affordable to households Pima with income at or below 80% of the Area Median Income ("AMI") as determined by the U.S. Department of Housing and Urban Development ("HUD") income guidelines.
- E. On March 1, 2016, Developer submitted a proposal ("Proposal") requesting **\$400,000.00** in Housing Bond sales proceeds to provide affordable housing on three contiguous lots in the Barrio Hollywood area of Tucson.

- F. **The Ontario Rental Housing Project** (the “Project”) will provide a total of six (6) affordable homes for a rental to home ownership incubation program for low-income families as more fully described herein.
- G. The Pima County Housing Commission recommended that the Pima County Board of Supervisors award **\$400,000.00** to Developer for the Project.
- H. On May 3, 2016, the Pima County Board of Supervisors approved an allocation of 2004 General Obligation Bond Proceeds, through the Pima County Housing Trust Fund, in an amount not to exceed **\$400,000.00** to assist with actual, documented, Project-related expenses of the Project.

**NOW THEREFORE**, County and Developer, pursuant to the above, and in consideration of the terms and agreements hereinafter set forth, do mutually agree as follows:

## AGREEMENT

### 1.0 TERM AND AMENDMENTS

- 1.1 The term of this Contract will begin on January 1, 2017 and will remain in effect until December 31, 2018, unless sooner terminated or extended pursuant to the terms set forth herein.
- 1.2 Except as set forth in paragraph 1.4 below and in the Neighborhood Reinvestment and Affordable Housing Program Substantial Change Process set forth in Exhibit A, any modification of the Contract must be by formal written amendment executed by the parties hereto.
- 1.3 Any amendments to the Contract 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 which do **NOT**:
  - 1.4.1 Change the specified purpose or outcomes;
  - 1.4.2 Increase the total compensation provided through this Contract; and
  - 1.4.3 In any way increase the direct or indirect liability of the County under this Contract.

### 2.0 SCOPE OF SERVICES

- 2.1 **Purpose.** This Contract sets forth the roles and responsibilities of the Parties for the design, construction, maintenance and operation of **The Ontario Rental Housing** (“the Project”) and addresses legal and administrative matters among the parties.
- 2.2 **Project.** In consideration for the bond proceeds provided under this Contract, Developer will design, build, maintain and rent affordable homes as set forth in Developer’s Project Narrative received on March 1, 2016 and attached as Exhibit B.
  - 2.2.1 The Project will be constructed on Ontario Street (no situs address assigned) in Tucson, AZ. The site originally consisted of the three (3) individual contiguous lots described below. On September 16, 2016, the Pima County Assessor approved a combination of the lots. A new tax parcel number will be assigned to the combined parcels.
    - 2.2.1.1 Tax Parcel No. 116-12-5350;
    - 2.2.1.2 Tax Parcel No. 116-12-5360; and
    - 2.2.1.3 Tax Parcel No. 116-12-5370.

2.2.2 On the property described in paragraph 2.2.1 above, Developer will construct six (6) new single-family rental homes. Each home will be approximately 1,300 square feet and will have:

2.2.2.1 Three (3) bedrooms;

2.2.2.2 Two (2) baths;

2.2.2.3 Kitchen;

2.2.2.4 Living area;

2.2.2.5 Block walls around the perimeter of the Project; and

2.2.2.6 Desert tolerant, low water use, native plantings and landscaping.

2.2.3 One of the six homes will be fully accessible according to ADA standards.

2.2.4 A total of twelve (12) on-site parking spaces will be provided.

2.2.5 Developer will encourage tenants to enroll in the PCCLT stewardship program to help prepare for future home ownership opportunities.

2.2.6 The Project will use the bond proceeds provided under the Contract as follows:

2.3 **Design and Construction.** Developer will:

2.3.1 Obtain any approvals, permissions and permits necessary for the completion of the Project.

2.3.2 Comply with all applicable federal, state, county and local laws, ordinances, regulations, building standards and codes, including Pima County Building Code (Title 15, Chapter 15.04) and the Pima County Inclusive Design Ordinance 2002-72 – Pima County local amendment to the 1998 American National Standard Accessible and Usable Buildings and Facilities Code (ANSI 117.1).

2.3.3 Ensure that the homes meet Universal Design Standards to exceed ADA standards.

2.3.4 Incorporate, to the greatest extent possible, energy and water efficient systems to meet City of Tucson Green Build Rating System for, at a minimum, a Silver Rating.

2.3.5 Comply with the applicable provisions of Title 34, Arizona Revised Statutes. Failure to follow Title 34 for construction activities will be considered a default and Developer will immediately repay to County any and all sums provided to Developer pursuant to this Contract.

2.3.6 Administer all construction contracts for the Project in accordance with all legal requirements, and A.R.S. § 35-460 if applicable, and in accordance with the Construction Schedule, as follows:

2.3.6.1 **Construction Schedule.** Developer will:

2.3.6.1.1. Prepare a construction schedule showing the anticipated timing and duration of each stage of construction (“Construction Schedule”);

2.3.6.1.2. Provide a Preliminary Construction Schedule to County no less than thirty (30) days after execution of this Contract;

2.3.6.1.3. Provide a final Construction Schedule within thirty (30) days after award of the construction contract(s) by Developer.

2.3.6.1.4. If the Project cannot be completed as set forth in the Construction Schedule, notify County and provide a revised Construction Schedule which is agreeable to County.

2.3.6.2 Change orders. Developer must consult with County on any proposed change order requests and will obtain prior written approval from County on all such requests prior to making any commitments for the expenditure of County bond proceeds on such changes.

2.3.6.3 Construction Documentation. Upon request of County's Project Manager, Developer will provide title reports, appraisal reports, construction contracts and other documents or information reasonable related to the work performed under this Contract.

2.3.6.4 Legal Claims. Developer will afford County the opportunity to review and comment on all legal claims prior to resolution thereof.

2.4 **County Recognition.** Developer will:

2.4.1 Acknowledge County's contribution to the Project in a form approved by County. Acceptable forms of recognition may include, but are not limited to: signs, permanent plaques, press releases and recognition at opening ceremonies.

2.4.2 Erect signs provided by County at the construction site. The signs will:

2.4.2.1 Be placed at locations agreed upon by the Parties;

2.4.2.2 Identify "Pima County Bond Funds" as the source of funding for the Project; and

2.4.2.3 Be returned to County after completion of construction and, if applicable, the dedication of the Project.

2.5 **Project Manager and Representatives.**

2.5.1 Developer will:

2.5.1.1 Provide construction management of and supervise all aspects of the Project and ensure that:

2.5.1.1.1. Construction work meets all standards and specifications set forth herein;

2.5.1.1.2. Construction site is secured to prevent breaking and entering, vandalism or other damage; and

2.5.1.1.3. Construction site and grounds are kept free of trash and construction debris.

2.5.1.2 Assign a qualified Project Manager to coordinate with County's liaison throughout construction and lease-up.

2.5.2 County will designate a staff member to act as the County Liaison to the Project Manager during construction of the Project.

2.6 **Developer warranties.** Developer warrants that:

2.6.1 It has the financial resources necessary to pay all costs in advance of requesting reimbursement from County.

2.6.2 It has disclosed all identities and all sources of financing and subsidies, including, but not limited to, construction, bridge and permanent loans.

2.6.3 Financing for the Project has been obtained as set forth in Exhibit B.

2.7 **Affordability.** The purpose of the Project is to provide safe, sustainable and affordable rental housing for low-income households. County has determined that the provision of such housing will be a substantial benefit to the public. In order to realize the public benefits, the parties acknowledge that continuing, rather than merely initial, affordability is required.

2.7.1 **Affordability.** Unless a funding source requires a different household composition and income eligibility, all six (6) single-family houses in the Project will be leased to qualified households. A “qualified household” is a household with a household income at or below 80% Area Median Income (“AMI”) as defined by the U.S. Department of Housing and Urban Development at the time of initial occupancy.

2.7.2 **Pima County Affordability Period.** All six (6) houses will be maintained and rented to qualified households for no less than thirty (30) years from the date that all of the following have occurred:

2.7.2.1 The Project is completed;

2.7.2.2 All six (6) houses have received the final certificate of occupancy from the City of Tucson; and

2.7.2.3 All (6) houses have been leased to qualified households.

2.7.3 **Affordability Restriction.** Notwithstanding any affordability periods and restrictions imposed by other funding sources for the Project, the Pima County Affordability Period will be secured through a regulatory agreement against the Project and in favor of Pima County in the form set forth in Exhibit C. **This Performance Deed of Trust must be executed and recorded in the Office of the Pima County Recorder prior to any payments being made under Section 3.0 of this Contract.** The Affordability Restriction will:

2.7.3.1 Give County a security interest in an amount equal to the amount of funds contributed by County under this Contract; and

2.7.4 Be superior to all monetary liens and encumbrances, except as specifically set forth in the Performance Deed of Trust, in the form of attached Exhibit C.

2.7.5 **This Section 2.7 will survive the termination, cancellation, expiration or revocation of this Contract, whether in whole or in part, and will remain in effect for the Affordability Period.**

2.8 **Operations and Management.** Developer will:

2.8.1 Begin marketing the Project at least 90 days before construction is completed.

2.8.2 Employ suitably trained and skilled personnel to perform all services under this Contract.

2.8.3 Throughout the initial lease-up and the Pima County Affordability Period, advertise available houses on Pima County’s Housing Search website:  
[www.pimacountyhousingsearch.org](http://www.pimacountyhousingsearch.org).

2.8.4 Determine the income eligibility of each tenant prior to executing a lease.

2.8.5 Retain documentation of tenant eligibility.

2.8.6 Collect rents.

2.8.7 Ensure that any vacant unit is secured and protected from vandalism.

2.8.8 Establish and maintain a property maintenance schedule to ensure that all houses and community amenities comply with ADA standards and applicable state, county and local standards at all times.



- 2.8.9 Maintain and repair the properties, including structures, physical plant, sidewalks, parking areas and landscaping, to ensure marketability and prevent deterioration, destruction or wasting. Keep grounds free of trash and debris.
- 2.8.10 Arrange for the on-site provision of support services to residents of the Project including, but not limited to, those designated in the Developer's Project Narrative and in the Bond Funding Application submitted to Pima County on March 1, 2016 and incorporated herein by reference.

## 2.9 **Monitoring and Evaluation.**

- 2.9.1 County may inspect any portion of the Project construction for substantial compliance with drawings and specifications and applicable code and standard provisions. Contractor will allow official County representatives reasonable access to the Project site during construction. The Project Manager and County Liaison will cooperate and consult with each other during Project construction.
- 2.9.2 County will have the right to monitor all activities and information sources in the management, fiscal and service systems of the Contractor and any subcontracted parties, relating to performance of duties and obligations under this Contract, to assure that Contractor is maintaining adequate and acceptable progress and systems, and to ensure that the funds provided to Contractor by County are being used effectively and efficiently to accomplish the purposes for which the funds were made available. County will have the right to review all contracts between Contractor and any subcontractors hired for the Project. Contractor will be responsible for delivering a copy of all contracts to the assigned Pima County Project Manager.
- 2.9.3 County may, at its discretion, monitor the Project operations at any time during the Affordability Period to verify that the Project is actively serving low-income households pursuant to the terms of this Contract.

## 3.0 **FINANCE AND PAYMENT**

- 3.1 County will allocate up to **\$400,000.00** of general obligation bond proceeds ("the Maximum Allocated Amount") for costs of the Project. County will reimburse Developer for the actual costs incurred by Developer for vertical construction of the structures and activities of the Project up to, but not in excess of, the Maximum Allocated Amount.
- 3.2 **No payment will be made by County until the following requirements have been met:**
  - 3.2.1 **Execution of Lien.** The Affordability Restriction described in paragraph 2.7.3 has been executed and recorded in the Office of the Pima County Recorder;
  - 3.2.2 **Reimbursement Schedule.** Within thirty (30) days after execution of this Contract, Developer has submitted to County a Reimbursement Schedule showing the anticipated dates and amounts of payment requests from Developer for reimbursement of Project expenses and a reasonable detailed Project Budget; and
  - 3.2.3 **Proof of Insurance.** Developer has furnished County proof that Developer has in place all the insurance policies required by Section 5.0 below, except that Developer will not be required to obtain Builder's Risk Insurance until vertical construction begins.
  - 3.2.4 **Title Policy.** Developer will assure issuance of a lender's policy of title insurance insuring the County's lien is valid and superior to all monetary liens and encumbrances on the Property other than the Construction Deeds of Trust, and subject only to such non-monetary encumbrances as are reasonably acceptable to County. County will, if Developer requests,

pay the premium for such insurance, but the cost of the premium will be deducted from the Allocated Maximum Amount.

3.3 County bond proceeds must be used only for the reasonable costs of the vertical construction of the structures in the Project (“the eligible expenses”).

3.4 None of the bond proceeds may be spent for management or administrative costs of the Project.

3.5 **Reporting and Payment Responsibilities.**

3.5.1 **Reimbursement Schedule.**

3.5.1.1 Developer will:

3.5.1.1.1. Within thirty (30) days after the execution of this Contract, submit to County a schedule (“the Reimbursement Schedule”) showing the anticipated dates and amounts of requests from Developer for reimbursement of expenses incurred and paid by Developer (“Reimbursement Requests”).

3.5.1.1.2. Within thirty (30) days of award of the last construction contract by Developer, Developer will provide County with a Final Reimbursement Schedule.

3.5.1.2 The Final Reimbursement Schedule may be combined with the Final Construction Schedule described in paragraph 2.3.7.1.3.

3.5.2 **Reimbursement Requests.** Developer will:

3.5.2.1 Within ten (10) days of the end of each month, starting on the date indicated in the Reimbursement Schedule, submit to County a Reimbursement Request for the previous month’s expenses. Each Reimbursement Request must:

3.5.2.1.1. Reference this contract number.

3.5.2.1.2. Be approved and signed by an authorized representative of Developer as true and accurate.

3.5.2.1.3. Be accompanied by supporting documentation which must include, but is not limited to:

3.5.2.1.3.1. A summary report of monthly expenditures;

3.5.2.1.3.2. Copies of invoices submitted by contractors and paid by Developer since the last Reimbursement Request; and

3.5.2.1.3.3. A certification that the invoices have been paid by Developer (less any retention held by Developer).

3.5.2.1.4. Be consistent with the Reimbursement Schedule.

3.5.2.1.5. Include a monthly progress report as set forth in paragraph 2.5.6 below.

3.5.2.2 Be responsible for verifying the accuracy of all invoices submitted by contractors.

3.5.2.3 Submit each Reimbursement Request to:

Community Development & Neighborhood Conservation Department  
Attn: Affordable Housing Project Coordinator  
c/o Pima County Housing Center  
801 W. Congress Street  
Tucson, AZ 85745

- 3.5.3 Payment. County will review each monthly Reimbursement Request and:
- 3.5.3.1 If approved, pay Developer within thirty (30) days after receipt of the Reimbursement Request (except for the final accounting and payment as set forth in paragraph 3.5.9 below); or
  - 3.5.3.2 If not approved, notify Developer of the reason for the disapproval (either orally or in writing) within fifteen (15) days after receipt of the Reimbursement Request. If the County does not object to the Reimbursement Request, it will pay the amount requested within thirty (30) days after receipt of the Reimbursement Request.
- 3.5.4 Withholding of Reimbursement. Notwithstanding any other provision herein, no reimbursement will be made for any Reimbursement Request until County is satisfied that the work for which the Reimbursement Request was submitted has been done satisfactorily, the general contractors and subcontractors have been paid (less any retention held by Developer), and the amounts requested have been verified and are for eligible expenses. Failure to pay the general contractor or any subcontractors for work contracted and performed may, in County's sole discretion, result in withholding of future reimbursements from the Developer and direct payment by County to the unpaid general contractor or subcontractor.
- 3.5.5 Temporary Payment Suspension. County may suspend payments under this Contract immediately for violation of contractual requirements, unsafe working conditions, violation of Federal or State law, or lack of reasonable progress on the Project. In the event of such suspension, Developer will assist County by providing information and documents to evaluate the status of the Project and to determine whether payments should be resumed or this Contract terminated.
- 3.5.6 Monthly Progress Reports.
- 3.5.6.1 Within ten (10) days of the end of each month, Developer will submit, a Monthly Progress Report, in the format attached as Exhibit D.
  - 3.5.6.2 **A Monthly Project Report must be submitted even if no reimbursement is being sought for the preceding month.**
  - 3.5.6.3 Reports will be submitted to the person and address set forth in paragraph 3.5.2.3.
- 3.5.7 Delays.
- 3.5.7.1 Developer will promptly notify County as soon as it becomes aware of a potential Project delay that may cause a deviation from the Construction Schedule and/or the Reimbursement Schedule.
  - 3.5.7.2 In the event of a deviation from the Reimbursement Schedule, County and Developer will establish a new Reimbursement Schedule which will be consistent with all applicable Federal Treasury Regulations.
- 3.5.8 Final Payment. Ten-percent (10%) of the Allocated Maximum Amount (\$40,000.00) will be retained by County and withheld from Developer until the occurrence of the following events:
- 3.5.8.1 Five percent (5.0%) of the Allocated Maximum Amount (\$20,000.00) will be disbursed to Developer upon receipt of the Certificates of Occupancy for all six houses.
  - 3.5.8.2 Five percent (5.0%) of the Allocated Maximum Amount (\$20,000.00) will be disbursed upon receipt of the Final Report and Final Accounting Statement described in paragraph 3.5.9 below.

### 3.5.9 Final Reporting and Accounting.

- 3.5.9.1 Within ninety (90) days after completion of Project and issuance of a Certificate of Occupancy for all houses in the Project, Developer will submit to County a final report in a format determined by County. The Final Report will include, but may not be limited to:
  - 3.5.9.1.1. Description of the Project as constructed and summary of the Project history (i.e. Project designer(s), engineer(s) and construction contractor(s); artist(s) responsible for the public art, if any, included in the Project; other funding sources; description of public participation; purpose and public benefit to be realized from the Project; other pertinent information);
  - 3.5.9.1.2. Photographs;
  - 3.5.9.1.3. Final as-built drawings;
  - 3.5.9.1.4. Reports or forms required by all other funding sources verifying the Project is completed;
  - 3.5.9.1.5. Certificates of Occupancy for all six houses;
  - 3.5.9.1.6. Evidence that the number of houses set forth in paragraph 2.7.2 are leased and occupied by a qualified household; and
  - 3.5.9.1.7. Evidence that the Project is being actively managed by Developer or its designated property manager.
- 3.5.9.2 At the same time Developer submits the Final Report, Developer will submit to County a detailed Final Accounting Statement of the funds expended on the Project and, if necessary, a final Reimbursement Request.
- 3.5.9.3 Failure to timely provide the Final Report and Final Accounting Statement may result in forfeiture of the retention amount still held by County and denial of the final reimbursement.
- 3.5.9.4 County will review the Final Accounting Statement and:
  - 3.5.9.4.1. If approved, pay Developer the amount set forth in the Final Reimbursement Request, if any, within forty-five (45) days after receipt of the Final Accounting Statement; or
  - 3.5.9.4.2. If not approved, notify Developer of the reason for the disapproval within fifteen (15) days after receipt of the Final Accounting Statement.

## 4.0 BOND FUNDING REQUIREMENTS

- 4.1 **Compliance.** Developer agrees to comply with all applicable provisions of Pima County Code Chapter 3.06 – *Bonding Disclosure, Accountability, and Implementation* and the Bond Ordinance, as they now exist or may hereafter be amended.
- 4.2 **Reports.** Any reports to be submitted by Developer to County in compliance with Pima County Code Chapter 3.06 or the Bond Ordinance must be provided in a format and schedule determined by County.

#### 4.3 **Amendment to the Bond Ordinance.**

- 4.3.1 Developer will notify County of any event that would require an amendment of the Bond ordinance and will formally request that the Pima County Board of Supervisors hold a public hearing on the requested amendment.
- 4.3.2 County and Developer will follow the procedures for amendment of the Bond Ordinance set forth in Pima County Code Chapter 3.06, as it may be amended or renumbered from time to time, and the relevant sections of the Bond Ordinance.
- 4.3.3 In the event that the Board of Supervisors does not approve Developer's request for a Bond Ordinance amendment, Developer will complete the Project as defined by the Bond Ordinance and this Contract.

#### 4.4 **Federal Treasury Regulations.**

##### 4.4.1 Developer acknowledges that:

- 4.4.1.1 County manages the expenditures of bond proceeds in order to qualify for a spending exception to the arbitrage rebate requirements of Sections 148 through 150 of the Internal Revenue Code of 1986 and the related regulations found in 26 CFR Part 1, §§1.148 through 1.150 as may be modified from time to time ("the Tax Exempt Bond Rules").
- 4.4.1.2 Arbitrage rebate is affected by both the use of bond proceeds and the timing of bond-related expenditures.

##### 4.4.2 Notwithstanding any other provision of this Contract, County may, in its sole discretion, either reallocate funds for the Project to other county bond-funded projects (which may, in some circumstances, result in a delay in payments under this Contract) or terminate this Contract as set forth in Section 7.0 below, if County determines that reallocation or termination is necessary or advantageous to County under the Tax Exempt Bond Rules in order to:

- 4.4.2.1 Qualify for a spending exception to the arbitrage rebate requirements; or
- 4.4.2.2 Reduce the amount of any potential arbitrage rebate or penalty; or
- 4.4.2.3 Manage County's Bond proceeds.

### 5.0 **INSURANCE**

5.1 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 Contract have been met. The below Insurance Requirements are minimum requirements for this Contract and in no way limit Developer's indemnity obligations under this Contract. 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 Contract. If necessary, Developer may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.

#### 5.2 **Insurance Coverages and Limits:**

- 5.2.1 **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.
- 5.2.2 **Business Automobile Liability:** Coverage for any owned, leased, hired, and/or non-owned autos assigned to or used in the performance of this Contract with minimum limits not less than \$1,000,000 Each Accident.

5.2.3 Workers' Compensation (WC) and Employers' Liability:

5.2.3.1 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.

5.2.3.2 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.

5.3 Additional Coverage Requirements:

5.3.1 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.

5.3.2 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.

5.3.3 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.

5.3.4 Primary Insurance: The Required Insurance policies, with respect to any claims related to this Contract, 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).

5.3.5 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.

5.3.6 Builder's Risk Insurance. When construction work begins, Developer shall obtain Builder's Risk Insurance in an amount equal to the outstanding amount of the contractual obligations entered into for the Project, with coverage written on an all risk, replacement cost basis and including coverage for soft costs, flood and earth movement. Developer must maintain Builder's Risk Insurance until final payment has been made from all sources.

5.3.7 Performance Bond. Developer will provide a Performance Bond for not less than one hundred percent (100%) of the Maximum Allocated Amount, or another method or assurance, approved by Pima County Board of Supervisors, that the Project will be completed.

#### 5.4 **Verification of Coverage:**

- 5.4.1 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:
- 5.4.1.1 The Pima County tracking number for this Contract, which is shown on the first page of the Contract, and a project description, in the body of the Certificate,
  - 5.4.1.2 A notation of policy deductibles or SIRs relating to the specific policy, and
  - 5.4.1.3 Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation waiver endorsements for the County and its Agents.
- 5.4.2 Each Required Insurance policy and appropriate endorsements must be in effect not less than 15 days prior to commencement of work under this Contract. 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 Contract.
- 5.4.3 County reserves the right to, at any time, require complete copies of any or all Required Insurance policies.
- 5.4.4 **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.

- 5.5 **Approval and Modifications:** The Pima County Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal Contract 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.

#### 6.0 **INDEMNIFICATION**

- 6.1 Developer 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 Developer, its agents, employees or anyone acting under its direction or control or on its behalf in connection with performance of this Contract and the Project.
- 6.2 **Preexisting Conditions.** To the fullest extent permitted by law, Developer will indemnify, defend and hold County, its boards, officers, departments, employees and agents, harmless from and against any claims and damages, as fully set out above, resulting from or arising out of the existence of any substance, material or waste, regulated pursuant to federal, state or local environmental laws, regulations or ordinances, that is present on, in or below or originated from property owned or controlled by Developer prior to the execution of this Contract.

- 6.3 **Notice of Claim.** Each party will notify the other in writing within thirty (30) days of the receipt of any claim, demand, suit or judgment against the receiving party for which the receiving party intends to invoke the provisions of this Section 6.0. Each party shall keep the other party informed on a current basis of its defense of any claims, demands, suits, or judgments under this Section 6.0.
- 6.4 Developer warrants that services provided under this Contract are non-infringing. Developer will indemnify, defend and hold County harmless from any claim of infringement arising from services provided under this Contract or from the provision, license, transfer or use for their intended purpose of any products provided under this Contract.
- 6.5 **This Section 6.0 will survive the termination, cancellation, expiration or revocation, whether in whole or in part, of this Contract.**

## **7.0 TERMINATION**

- 7.1 **Termination for Convenience:** County reserves the right to terminate this Contract at any time and without cause by serving upon Developer thirty (30) days advance written notice of such intent to terminate. 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.
- 7.2 **Termination for Cause:** This Contract may be terminated at any time without advance notice and without further obligation by the County when the Developer is in default of any provision of this Contract.
- 7.3 **Default.** If Developer at any time defaults in the performance of any of Developer's obligations under this Contract, County may suspend payments to Developer as set forth in paragraph 3.5.5 above until such time as the default is cured. In addition, County may terminate this Contract if any default is not cured within sixty (60) days of Developer's receipt of a written notice from County stating the nature of the default.
- 7.4 **Non-Appropriation:** Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Developer, other than for services rendered prior to termination.
- 7.5 **Suspension:** County reserves the right to suspend Developer's performance and payments under this Contract immediately upon notice delivered to Developer's designated agent in order to investigate Developer's activities and compliance with this Contract. 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 contract will be immediately terminated or that performance may be resumed.
- 7.6 **Arbitrage Rebate Requirements.** The County reserves the right to cease payments to Developer and unilaterally terminate this Contract if the County determines, in County's sole discretion, that any action or inaction on the part of Developer is likely to occur that would adversely affect the election made by the County under the Tax Exempt Bond Rules relating to exceptions for arbitrage rebate.
- 7.7 **Effect of Termination.** Any termination of this Contract will not relieve any party from liability or costs already incurred under this Contract.

## **8.0 CANCELLATION FOR CONFLICT OF INTEREST**

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



## **9.0 BOOKS, RECORDS AND INSPECTIONS**

- 9.1 Books and Records. Developer must keep and maintain proper and complete books, records and accounts of the Project. For bond purposes, the Project books and records must continue to be maintained for a period of three (3) years after final payment of the bonds issued for the Project. The bonds funding the Project are expected to be fully paid by June 30, 2032, but may be subject to refunding.
- 9.2 Inspection and Audit. The books, records and accounts of the Project must be available for inspection and audit by duly authorized representatives of County at all reasonable times during the period in which said books, records and accounts must be maintained by the Developer.
- 9.3 Indemnification. Developer must indemnify and hold the County harmless from and against any amount required to be paid to the Internal Revenue Service or any governmental agency arising out of the failure by Developer to maintain such records.

## **10.0 COMPLIANCE WITH LAWS**

- 10.1 Developer and County will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract.
- 10.2 The laws and regulations of the State of Arizona will govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract must be brought in a court of the State of Arizona in Pima County.
- 10.3 Any changes in the governing laws, rules, and regulations during the terms of this Contract will apply, but do not require an amendment.

## **11.0 INDEPENDENT CONTRACTOR**

The status of Developer will be that of an independent contractor. Neither Developer nor Developer'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. Developer will be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and will indemnify and hold County harmless from any and all liability which County may incur because of Developer's failure to pay such taxes. Developer will be solely responsible for its program development, operation, and performance.

## **12.0 SUBCONTRACTORS**

- 12.1 Except as provided in paragraph 12.2, Developer will not enter into any subcontracts for any services to be performed under this Contract 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.
- 12.2 Prior written approval is not required for the purchase of supplies that are necessary and incidental to Developer's performance under this Contract.
- 12.3 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 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.
- 12.4 Developer must include the provision set forth in paragraph 3.6 in all contracts between Developer and its subcontractors providing goods or services pursuant to this Contract. 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.

### **13.0 AUTHORITY TO CONTRACT**

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

### **14.0 NOTICE**

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

**County:**

C.H. Huckelberry, County Administrator  
130 W. Congress, 10<sup>th</sup> Floor  
Tucson, AZ 85701

Robin Brigode, Clerk of the Board  
130 W. Congress, 5<sup>th</sup> Floor  
Tucson, AZ 85701

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

**DEVELOPER:**

Pima County Community Land Trust  
Attn: Maggie Amado-Tellez, Ex. Director  
801 W. Congress Street  
Tucson, AZ 85745

### **15.0 ASSIGNMENT**

Developer will not assign its rights to this Contract 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.

### **16.0 NON-DISCRIMINATION**

- 16.1 Developer 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.
- 16.2 During the performance of this Contract, 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.

### **17.0 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 Contract.

## **18.0 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 Contract 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.

## **19.0 OTHER DOCUMENTS**

- 19.1 In entering into this Contract, Developer and County have relied upon information provided in Developer's proposal submitted February 26, 2016, and with revisions submitted October 25, 2016 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 said Solicitation.
- 19.2 The documents set forth in Paragraph 19.1 are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this Contract, 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.

## **20.0 PUBLIC INFORMATION**

- 20.1 Pursuant to Arizona Public Records law, A.R.S. § 39-121 *et seq.*, documents submitted by Developer 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.
- 20.2 In the event that County receives a public records request pursuant to A.R.S. § 39-121 *et seq.* for documents Developer submitted to County, County will notify Developer on the same day the request is made or as soon as possible thereafter.
- 20.3 County will release Developer's records ten (10) business days after the date of notice to the Developer, unless Developer 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.
- 20.4 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 Developer nor will County be in any way financially responsible for any costs associated with securing such an order.

## **21.0 LEGAL ARIZONA WORKERS ACT COMPLIANCE**

- 21.1 Developer hereby warrants that it will at all times during the term of this Contract 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 contract likewise complies with the State and Federal Immigration Laws.
- 21.2 County will have 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.

- 21.3 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, will be deemed to be a material breach of this Contract subjecting Developer to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, 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, (subject to County approval if Minority and Women Business E preferences apply) as soon as possible so as not to delay project completion.
- 21.4 Developer will advise each subcontractor of County's rights, and the Subcontractor's obligations, under this Section 21.0 by including a provision in each subcontract substantially in the following form:

*"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."*

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

## **22.0 REMEDIES**

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

## **23.0 NO THIRD PARTY BENEFICIARIES**

Nothing in the provisions of this Contract is intended to create duties or obligations to or rights in third parties not parties to this Contract or effect the legal liability of either party to the Contract by imposing any standard of care different from the standard of care imposed by law.

## **24.0 ISRAEL BOYCOTT CERTIFICATION**

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

## **25.0 SEVERABILITY**

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

**26.0 ENTIRE AGREEMENT**

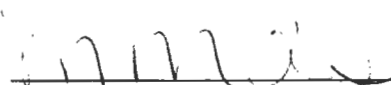
- 26.1 This document constitutes the entire agreement between the parties pertaining to the subject matter hereof.
- 26.2 No verbal agreements or conversations with any officer, agent or employee of County prior to or after the execution of this Contract will affect or modify any of the terms or obligations contained in any documents comprising this Contract. Any such verbal 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.
- 26.3 This Contract 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 Contract on the date written below.

PIMA COUNTY

DEVELOPER

\_\_\_\_\_

\_\_\_\_\_

Chair, Board of Supervisors

Signature

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

Maggie Atmadu-Tellez  
Printed name and title

Date: 11-18-16

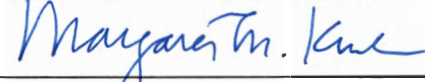
ATTEST

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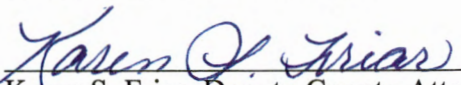
Clerk of the Board

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

APPROVED AS TO CONTENT:

 11/21/2016  
Director, Community Development  
and Neighborhood Conservation

APPROVED AS TO FORM:

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

## SUBSTANTIAL CHANGE

### BACKGROUND:

Pima County funds various Neighborhood Reinvestment and Affordable Housing Program projects with Pima County General Obligation Bond funds (“bond funds”). In order to receive funding, interested parties submit proposals or applications to either the Neighborhood Reinvestment Oversight Committee or the County Housing Commission (“recommending body”).

The Pima County Board of Supervisors (“Board”) reviews the recommendations and determines whether or not a particular project may be funded. Funding is awarded through the execution of a contract or intergovernmental agreement with the appropriate party or jurisdiction. Until such document is properly executed, no bond funds are committed to any particular project. Once a legally binding document is executed, County staff will manage the project to assure contractual compliance.

### PURPOSE:

The contract or intergovernmental agreement sets forth the scope and design of the project. Allowances are made within the document for minor changes. However, at times, the contractor seeks to make a substantial change to the scope and design set forth either in the original proposal or application or in the executed document. The following procedures are established to direct the process for the approval of a substantial change to a project funded (or seeking funding) by Pima County General Obligation Bond monies.

### PROCESS:

Once a project is approved by the recommending body, there are three points at which a substantial change might be requested: (1) prior to initial approval by the Board; (2) after Board approval, but before the execution of a legally binding document; or, (3) after the execution of a contract or intergovernmental agreement.

#### **1.0 Prior to initial approval by the Board or after Board approval, but before the execution of a legally binding document.**

- 1.1. The party or jurisdiction seeking bond funds, contacts Pima County Community Development & Neighborhood Conservation (“CDNC”) program manager regarding the requested change.
- 1.2. CDNC staff will determine if it is necessary to review documentation and, if so, what documentation the contractor or jurisdiction must provide for the review.
- 1.3. CDNC staff reviews the change and determines if the requested change is, in fact, substantial and if it is necessary to present the request to the recommending body.
- 1.4. The recommending body may ask the requesting party to:
  - 1.4.1. Make a formal presentation regarding the specific changes to the recommending body at a public meeting;
  - 1.4.2. Submit a written revision to the original proposal; or
  - 1.4.3. Submit a new proposal.

- 1.5. After review, the recommending body may choose to:
  - 1.5.1. Recommend that the Board approve the project for funding as revised; or
  - 1.5.2. Revoke the original recommendation for funding.

## **2.0 After the execution of a legally binding document.**

- 2.1. The party or jurisdiction seeking bond funds, contacts CDNC director regarding the requested change.
- 2.2. CDNC staff will determine what documentation contractor or jurisdiction must provide for review.
- 2.3. CDNC staff reviews the change, assesses the impact of the proposed change and, if necessary, discusses the proposed change with the Pima County Attorney's Office.
- 2.4. CDNC staff will discuss the proposed change with the recommending body.
- 2.5. After review, the recommending body may choose to:
  - 2.5.1. Recommend that the Board of Supervisors (Board) approve the amended project for funding;
  - 2.5.2. Recommend that the Board not approve the amended project and continue to enforce the terms set forth in the initial contract or the IGA; or
  - 2.5.3. Recommend that the Board consider termination of the contract or IGA, as allowed under the terms of the contract or IGA.
- 2.6. If necessary, CDNC staff will prepare an amendment to the contract or IGA or the required termination documentation for the Board.
- 2.7. The Board, in its sole discretion, may accept and execute the amendment or proceed with the termination of the contract or IGA.

**3.0 Program authority.** The CDNC director or her designee is charged with reviewing any of the changes proposed by the contractor or the jurisdiction to determine if the proposed changes are a significant deviation from the original approved proposal. In the event that the CDNC director or her designee believe that the changes rise to the level of *substantial change* the process described in Sections 1.0 or 2.0 this document will be implemented.

**4.0 Substantial changes.** A *substantial change* includes, but is not limited to, any change in project concept, design or scope that would, by itself, or in combination with other factors do any of the following:

- 4.1. Result in a significant escalation in project cost. This includes either a change in the amount of bond funding sought or a change in other funds dedicated to the Project from other sources.
- 4.2. Impact or revise the stated intent of the original proposal or application.
- 4.3. Alter the number or type of specific units or amenities.
- 4.4. Alter the construction schedule in such a manner that will delay the completion of the project.
- 4.5. Alter the construction schedule in such a manner that will change the bond funding schedules.
- 4.6. Result in non-compliance with the bond ordinance.
- 4.7. Result in non-compliance with any federal or state law or regulation.

**PROJECT NARRATIVE**

**Project Description.** Describe in detail your request for funding assistance.

The Pima County Community Land Trust seeks funding for the construction of 6 single family homes on three contiguous R-2 lots purchased by PCCLT as land trust property to be held for long term affordability. The lots are located in Barrio Hollywood just west of downtown Tucson, in census tract 1100. The property is near the southwest corner of Ontario and Cherokee streets. The legal description is El Rio Park Lots 2, 3, 4 Block 23. Homes will be built toward the front and rear of each 50x150 lot. The site plan is provided in Tab 13.

Proposed bond fund improvements include the pre-development and construction of 6 single family homes, two on each of three contiguous R-2 lots. Each home will be 3 bedrooms and 2 baths and contain 1304 sq.ft. The homes are to be frame stucco construction with attractive clay tile entry porticos, and are consistent with the surrounding neighborhood. These homes incorporate many energy and water efficient systems, and will meet City of Tucson Green Build standards Silver certification. All homes will meet visitability standards and one unit will follow Pima County Development Services Inclusive Home Design Ordinance for full accessibility.

The Pima County Community Land Trust has applied for \$410,000 in HOME funding in addition to this \$400,000 General Obligation Bond fund request. PCCLT purchased the three Ontario Project lots in May of 2015 with \$69,236 of its own funds. The Pascua Yaqui Tribe awarded PCCLT \$20,000 that is to be used toward pre-development costs at the site. PCCLT has also secured a Line of Credit with Bank of Tucson that will provide interim financing to ensure the contractor will be paid in a timely manner so as to ensure the project stays true to the timeline. The City of Tucson Community Services Department has approved Impact fee waivers that will provide a \$44,730 reduction in project costs. Commitment letters not provided in Tab 5 will be provided prior to June 30, 2016. PCCLT will continue efforts to bring additional resources (both funds and in-kind) into the project to ensure the minimization of debt service which will increase PCCLT's cash flow.

The Pima County Community Land Trust serves individuals and families who primarily reside in the City of Tucson, the inner-city municipality of South Tucson, towns and unincorporated areas of Pima County. Prospective tenants will come from throughout the Pima County Area. PCCLT commits to affirmatively furthering fair housing and will provide outreach to individuals outside the project neighborhood to ensure diversity and inclusion. PCCLT partners with housing counseling agencies including Chicanos Por La Causa, Family Housing Resources, Old Pueblo Community Services, Pio Decimo Center, Primavera Foundation and TMM Family Services. These agencies will be a good referral source for tenants by identifying prospective buyers who are not quite ready to purchase. Information about available homes for rent will be provided through the City of Tucson and Pima County public information channels, advertised through local media and on PCCLT's own website and social media. Outreach will include minority and protected classes and those least likely to seek housing provided by the proposed project. All PCCLT staff members are bilingual (Spanish). Sign language interpreters are provided as needed and other reasonable accommodations for individuals with disabilities will be provided as needed. The Ontario project is designed as a rental incubation project for low-moderate income families. All units will meet visitability standards and one unit will follow Pima County Development Services Inclusive Home Design Ordinance. Four of the six Ontario



units will be set aside as HOME units. Using a Low HOME 3 bdr. base rental figure of \$987 (assuming a family of four) less \$258 utility allowance means the four HOME units will rent for \$729 per month. A Search of the Socialserve.com website found only ten 3 bedroom homes for rent under \$900 a month and only one in the project zip code. A search on the PimaCountyHousingSearch.org website with the same parameters, but including accessibility features showed no available properties. PCCLT's Ontario Project will have one fully accessible unit. The January 2016 Rental Housing Statistic report from Tucson's Multiple Listing service states that the average monthly rent for Single Family Residences was \$1,239. A search of the Barrio Hollywood neighborhood in February 2016 identified only two 3 bedroom 2 bath rentals available, both priced at \$995 per month. According to HUD CHAS data, 56% of City and County renters in the 50-80% AMI bracket, are cost burdened, paying more than 30% of their household income on housing costs. The Pima County Community Land Trust does not have a current waiting list as the previous program delivery focused solely on homeownership. Through the homeownership model, PCCLT realized the number of LMI individuals desiring quality affordable housing and that only one out of twenty were ready to be homeowners. Providing affordable rental housing with a goal of homeownership is a unique model that will help City and County increase their identified homeownership goal. The City of Tucson's General Plan listed the promotion of homeownership as a most relevant housing and community development goal alongside supporting development opportunities that increase access to safe, healthy and affordable housing choices. Both Pima County and the City of Tucson identified affordable rental housing, especially new construction as a high priority 5-year goal.

**END OF EXHIBIT B**

**EXHIBIT C**

**PERFORMANCE DEED OF TRUST**

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When Recorded, Please Return To:

Neighborhood Reinvestment Program  
Community and Economic Development  
Pima County  
2797 East Ajo Way  
Tucson, AZ 85713-6223

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**PERFORMANCE DEED OF TRUST  
AFFORDABLE HOUSING BOND PROGRAM**

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

**1. Definitions**

- 1.1. **Trustor.** **Pima County Community Land Trust**, an Arizona nonprofit corporation (The Partnership), with a mailing address of: 801 W. Congress Street, Tucson, AZ 85745-2819
- 1.2. **Trustee.** Stewart Title & Trust of Tucson, 6400 North Oracle Road, Suite 102, Tucson, AZ 85704.
- 1.3. **Beneficiary or County.** Pima County, a body politic and corporate of the State of Arizona, whose mailing address is: Pima County Community Development and Neighborhood Conservation Department, 2797 East Ajo Way, Tucson, AZ 85713-6223.
- 1.4. **Parties.** Trustor, Trustee and Beneficiary are collectively the Parties, and individually a Party.
- 1.5. **Property.** The real properties situated in the County of Pima, State of Arizona, as described in **Exhibit A** attached hereto and made a part hereof, together with all buildings, improvements and fixtures thereon or hereinafter erected thereon.
- 1.6. **Project.** Construction of six (6) single-family rental homes on Ontario Street in Tucson, AZ known as "The Ontario Rental Housing Project."
- 1.7. **Bond Fund Contract.** The Affordable Housing Bond Fund Contract, Pima County Contract No. CT-CD- \*, between Trustor and Beneficiary for the construction of the Project, as described in **Exhibit B** attached hereto (without Exhibits) and made a part hereof.

1.8. Bond Covenants. The following are Bond Covenants for purposes of this Performance Deed of Trust:

1.8.1. Performance pursuant to the terms and conditions of the Bond Fund Contract.

1.8.2. Affordability Period. All six (6) homes will be maintained and rented to qualified households for a **minimum of thirty (30) years** from the date all of the following have occurred:

1.8.2.1. The Project is completed;

1.8.2.2. All six (6) homes have received the final certificate of occupancy from the City of Tucson; and

1.8.2.3. All six (6) homes have been leased to qualified households.

1.8.3. Qualified Household. A “qualified household” is a household with a household income at or below 80% Area Median Income (“AMI”) as defined by the U.S. Department of Housing and Urban Development at the time of initial occupancy.

1.8.4. The Affordability Period will remain in full force and effect regardless of any changes in ownership of the Property

1.9. County Contribution. The sum of Four Hundred Thousand Dollars (**\$400,000.00**), which is the amount contributed by Beneficiary towards the Project.

2. **Parties**. This Performance Deed of Trust is entered into by and among Trustor, Trustee and Beneficiary.

3. **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, rents, issues, profits, or income therefrom (all of which are “*Property Income*”), subject to:

3.1. the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income; and

3.2. 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.

4. **Security**. The grant pursuant to Paragraph 3 above is for the purpose of securing:

4.1. performance of the Bond Covenants;

4.2. 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 Bond Fund Contract and this Performance Deed of Trust; and

4.3. performance of each agreement of Trustor herein contained.

5. **Termination of Deed of Trust.** Notwithstanding any other provision of this Performance Deed of Trust, this Performance Deed of Trust will terminate at the end of the Affordability Period. After the expiration of the Affordability Period, Beneficiary will execute a release of this Performance Deed of Trust within thirty (30) days after receiving a written request from Trustor.

6. **Obligations of Trustor to Protect Security.** To protect the security of this Performance Deed of Trust, Trustor agrees:

6.1. 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 the 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 act upon the Property in violations of law; and do all other acts which from the character or use of the Property and may be reasonably necessary, the specific enumerations herein not excluding the general;

6.2. to provide, maintain, and deliver to Beneficiary, fire insurance for the Project satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary, the entire amount so collected or any part thereof, may be released to Trustor. Such application or release shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice;

6.3. 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 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 Performance Deed of Trust; and

6.4. to pay, before delinquent, all taxes and assessments affecting the Property; when due, 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 Release and Full Reconveyance, and all lawful charges, costs, and expenses in the event of reinstatement of, following default in, this Performance Deed of Trust or the obligations secured hereby.

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

7.1. Should Trustor fail to make any payment or to do any act as herein provided, then 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 deem 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 his reasonable fees.

- 7.2. 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.

## **8. Repayment of County Contribution.**

- 8.1. Trustor agrees that the County Contribution shall become immediately due and payable to County, only upon the occurrence of the following events ("*Event of Repayment*"):
- 8.1.1. a breach of the Bond Covenants 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
- 8.1.2. 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
- 8.1.3. the commencement of a sale of the Property by a senior lienholder, either by Trustee's sale or by judicial foreclosure.

## **9. Right to Sell Property.**

- 9.1. 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.
- 9.2. 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.
- 9.3. 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.

9.4. In lieu of sale pursuant to the power of sale conferred hereby, this Performance Deed of Trust may be foreclosed in the same manner provided by law for the foreclosures of mortgages on real property. Beneficiary shall also have all other rights and remedies available hereunder and at law or in equity. All rights and remedies shall be cumulative

**10. Injunctive Relief.** Trustor agrees that in the event of a breach or threatened breach of the Bond Covenants, 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 Bond Covenants 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.

**11. Subordinate Lien.** The lien of this Performance Deed of Trust is junior and subordinate to the liens set forth on Exhibit C hereto.

**12. Miscellaneous.**

12.1. 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.

12.2. 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.

12.3. 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. 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.

12.4. Request for Notice by Trustor. The undersigned Trustors request that a copy of any notice of Trustee's sale hereunder be mailed to each Trustor at its address hereinbefore set forth.

12.5. 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.

**SIGNATURES ON FOLLOWING PAGES**

**TRUSTOR: The Pima County Community Land Trust, a non-profit corporation registered to do business in the State of Arizona.**

**The Pima County Community Land Trust**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Its

State of Arizona    )  
                          ) ss.  
County of Pima     )

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_  
\_\_\_\_\_.

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

My Commission Expires: \_\_\_\_\_



**BENEFICIARY: Pima County, a body politic and corporate of the State of Arizona:**

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

\_\_\_\_\_  
Date

ATTEST:

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

\_\_\_\_\_  
Date

State of Arizona )

) ss.

County of Pima )

Acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ as  
Chair of the Board of Supervisors of Pima County, a body politic and corporate of the State of Arizona,  
on behalf of the County.

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

My Commission Expires: \_\_\_\_\_

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Margaret Kish, Director, Community Development and  
Neighborhood Conservation

\_\_\_\_\_  
Date

**LEGAL DESCRIPTION OF THE PROPERTY**

ADDRESS: No situs address  
TAX PARCEL NO.: 116-12-5350  
LEGAL DESCRIPTION: EL RIO PARK LOT 2 BLK 23

ADDRESS: No situs address  
TAX PARCEL NO.: 116-12-5360  
LEGAL DESCRIPTION: EL RIO PARK LOT 3 BLK 23

ADDRESS: No situs address  
TAX PARCEL NO.: 116-12-5370  
LEGAL DESCRIPTION: EL RIO PARK LOT 4 BLK 23

**ON SEPTEMBER 16, 2016, THE PIMA COUNTY ASSESSOR APPROVED A COMBINATION OF THE LOTS. A NEW TAX PARCEL NUMBER WILL BE ASSIGNED TO THE COMBINED PARCELS.**

END OF EXHIBIT A

**BOND CONTRACT**  
**(without associated Exhibits)**

(not included in Exhibit C of contract)

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

**PROJECT:** THE ONTARIO RENTAL HOUSING  
PROJECT

**DEVELOPER:** The Pima County Community Land Trust  
801 W. Congress Street  
Tucson, AZ 85745

**CONTRACT TERM:** January 1, 2017 to December 31,  
2018

**AMOUNT:** \$400,000.00

**FUNDING:** 2004 Neighborhood Reinvestment General  
Obligation Bond Sale Proceeds

This Contract is entered into by and between Pima County, a body politic and corporate of the State of Arizona ("County") and The Pima County Community Land Trust ("Contractor" or "Developer").

**RECITALS**

- A. In an election held on May 18, 2004 (2004 Special Bond Election), Pima County voters authorized the sale of bonds and use of proceeds for, *inter alia*, acquiring, developing, expanding, improving and equipping new and existing facilities to further the health, education, welfare and safety of the citizens of the County, including, without limitation, housing and other improvements and facilities to further neighborhood reinvestment.
- B. In compliance with Pima County Code Chapter 3.06, titled Bonding Disclosure, Accountability and Implementation, the Board of Supervisors adopted Ordinance No. 2004-18, the Bond Implementation Plan, May 18, 2004 Special Election (the "2004 Bond Ordinance").
- C. Section VII(B)(1)(c)(2.10) of the 2004 Bond Ordinance allocates ten million dollars (\$10,000,000.00) in bond proceeds to be issued for investment in projects that expand home ownership opportunities and provide access to affordable housing for low-income residents of Pima County. Pursuant to A.R.S. § 11-381, County is using these funds to assist with affordable housing projects being carried out by others.
- D. Pima County Community Development and Neighborhood Conservation Department, in conjunction with the Pima County Housing Commission, solicited applications and conducted an evaluation process to select qualified projects involving the construction, rehabilitation, or preservation of housing that is affordable to households Pima with income at or below 80% of the Area Median Income ("AMI") as determined by the U.S. Department of Housing and Urban Development ("HUD") income guidelines.
- E. On March 1, 2016, Developer submitted a proposal ("Proposal") requesting **\$400,000.00** in Housing Bond sales proceeds to provide affordable housing on three contiguous lots in the Barrio Hollywood area of Tucson.

- F. **The Ontario Rental Housing Project** (the “Project”) will provide a total of six (6) affordable homes for a rental to home ownership incubation program for low-income families as more fully described herein.
- G. The Pima County Housing Commission recommended that the Pima County Board of Supervisors award **\$400,000.00** to Developer for the Project.
- H. On May 3, 2016, the Pima County Board of Supervisors approved an allocation of 2004 General Obligation Bond Proceeds, through the Pima County Housing Trust Fund, in an amount not to exceed **\$400,000.00** to assist with actual, documented, Project-related expenses of the Project.

**NOW THEREFORE**, County and Developer, pursuant to the above, and in consideration of the terms and agreements hereinafter set forth, do mutually agree as follows:

## **AGREEMENT**

### **1.0 TERM AND AMENDMENTS**

- 1.1 The term of this Contract will begin on January 1, 2017 and will remain in effect until December 31, 2018, unless sooner terminated or extended pursuant to the terms set forth herein.
- 1.2 Except as set forth in paragraph 1.4 below and in the Neighborhood Reinvestment and Affordable Housing Program Substantial Change Process set forth in Exhibit A, any modification of the Contract must be by formal written amendment executed by the parties hereto.
- 1.3 Any amendments to the Contract 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 which do **NOT**:
  - 1.4.1 Change the specified purpose or outcomes;
  - 1.4.2 Increase the total compensation provided through this Contract; and
  - 1.4.3 In any way increase the direct or indirect liability of the County under this Contract.

### **2.0 SCOPE OF SERVICES**

- 2.1 **Purpose.** This Contract sets forth the roles and responsibilities of the Parties for the design, construction, maintenance and operation of **The Ontario Rental Housing** (“the Project”) and addresses legal and administrative matters among the parties.
- 2.2 **Project.** In consideration for the bond proceeds provided under this Contract, Developer will design, build, maintain and rent affordable homes as set forth in Developer’s Project Narrative received on March 1, 2016 and attached as Exhibit B.
  - 2.2.1 The Project will be constructed on Ontario Street (no situs address assigned) in Tucson, AZ. The site originally consisted of the three (3) individual contiguous lots described below. On September 16, 2016, the Pima County Assessor approved a combination of the lots. A new tax parcel number will be assigned to the combined parcels.
    - 2.2.1.1 Tax Parcel No. 116-12-5350;
    - 2.2.1.2 Tax Parcel No. 116-12-5360; and
    - 2.2.1.3 Tax Parcel No. 116-12-5370.

2.2.2 On the property described in paragraph 2.2.1 above, Developer will construct six (6) new single-family rental homes. Each home will be approximately 1,300 square feet and will have:

2.2.2.1 Three (3) bedrooms;

2.2.2.2 Two (2) baths;

2.2.2.3 Kitchen;

2.2.2.4 Living area;

2.2.2.5 Block walls around the perimeter of the Project; and

2.2.2.6 Desert tolerant, low water use, native plantings and landscaping.

2.2.3 One of the six homes will be fully accessible according to ADA standards.

2.2.4 A total of twelve (12) on-site parking spaces will be provided.

2.2.5 Developer will encourage tenants to enroll in the PCCLT stewardship program to help prepare for future home ownership opportunities.

2.2.6 The Project will use the bond proceeds provided under the Contract as follows:

2.3 **Design and Construction.** Developer will:

2.3.1 Obtain any approvals, permissions and permits necessary for the completion of the Project.

2.3.2 Comply with all applicable federal, state, county and local laws, ordinances, regulations, building standards and codes, including Pima County Building Code (Title 15, Chapter 15.04) and the Pima County Inclusive Design Ordinance 2002-72 – Pima County local amendment to the 1998 American National Standard Accessible and Usable Buildings and Facilities Code (ANSI 117.1).

2.3.3 Ensure that the homes meet Universal Design Standards to exceed ADA standards.

2.3.4 Incorporate, to the greatest extent possible, energy and water efficient systems to meet City of Tucson Green Build Rating System for, at a minimum, a Silver Rating.

2.3.5 Comply with the applicable provisions of Title 34, Arizona Revised Statutes. Failure to follow Title 34 for construction activities will be considered a default and Developer will immediately repay to County any and all sums provided to Developer pursuant to this Contract.

2.3.6 Administer all construction contracts for the Project in accordance with all legal requirements, and A.R.S. § 35-460 if applicable, and in accordance with the Construction Schedule, as follows:

2.3.6.1 **Construction Schedule.** Developer will:

2.3.6.1.1. Prepare a construction schedule showing the anticipated timing and duration of each stage of construction (“Construction Schedule”);

2.3.6.1.2. Provide a Preliminary Construction Schedule to County no less than thirty (30) days after execution of this Contract;

2.3.6.1.3. Provide a final Construction Schedule within thirty (30) days after award of the construction contract(s) by Developer.

2.3.6.1.4. If the Project cannot be completed as set forth in the Construction Schedule, notify County and provide a revised Construction Schedule which is agreeable to County.

2.3.6.2 Change orders. Developer must consult with County on any proposed change order requests and will obtain prior written approval from County on all such requests prior to making any commitments for the expenditure of County bond proceeds on such changes.

2.3.6.3 Construction Documentation. Upon request of County's Project Manager, Developer will provide title reports, appraisal reports, construction contracts and other documents or information reasonable related to the work performed under this Contract.

2.3.6.4 Legal Claims. Developer will afford County the opportunity to review and comment on all legal claims prior to resolution thereof.

2.4 **County Recognition.** Developer will:

2.4.1 Acknowledge County's contribution to the Project in a form approved by County. Acceptable forms of recognition may include, but are not limited to: signs, permanent plaques, press releases and recognition at opening ceremonies.

2.4.2 Erect signs provided by County at the construction site. The signs will:

2.4.2.1 Be placed at locations agreed upon by the Parties;

2.4.2.2 Identify "Pima County Bond Funds" as the source of funding for the Project; and

2.4.2.3 Be returned to County after completion of construction and, if applicable, the dedication of the Project.

2.5 **Project Manager and Representatives.**

2.5.1 Developer will:

2.5.1.1 Provide construction management of and supervise all aspects of the Project and ensure that:

2.5.1.1.1. Construction work meets all standards and specifications set forth herein;

2.5.1.1.2. Construction site is secured to prevent breaking and entering, vandalism or other damage; and

2.5.1.1.3. Construction site and grounds are kept free of trash and construction debris.

2.5.1.2 Assign a qualified Project Manager to coordinate with County's liaison throughout construction and lease-up.

2.5.2 County will designate a staff member to act as the County Liaison to the Project Manager during construction of the Project.

2.6 **Developer warranties.** Developer warrants that:

2.6.1 It has the financial resources necessary to pay all costs in advance of requesting reimbursement from County.

2.6.2 It has disclosed all identities and all sources of financing and subsidies, including, but not limited to, construction, bridge and permanent loans.

2.6.3 Financing for the Project has been obtained as set forth in Exhibit B.

- 2.7 **Affordability**. The purpose of the Project is to provide safe, sustainable and affordable rental housing for low-income households. County has determined that the provision of such housing will be a substantial benefit to the public. In order to realize the public benefits, the parties acknowledge that continuing, rather than merely initial, affordability is required.
- 2.7.1 **Affordability**. Unless a funding source requires a different household composition and income eligibility, all six (6) single-family houses in the Project will be leased to qualified households. A “qualified household” is a household with a household income at or below 80% Area Median Income (“AMI”) as defined by the U.S. Department of Housing and Urban Development at the time of initial occupancy.
- 2.7.2 **Pima County Affordability Period**. All six (6) houses will be maintained and rented to qualified households for no less than thirty (30) years from the date that all of the following have occurred:
- 2.7.2.1 The Project is completed;
- 2.7.2.2 All six (6) houses have received the final certificate of occupancy from the City of Tucson; and
- 2.7.2.3 All (6) houses have been leased to qualified households.
- 2.7.3 **Affordability Restriction**. Notwithstanding any affordability periods and restrictions imposed by other funding sources for the Project, the Pima County Affordability Period will be secured through a regulatory agreement against the Project and in favor of Pima County in the form set forth in Exhibit C. **This Performance Deed of Trust must be executed and recorded in the Office of the Pima County Recorder prior to any payments being made under Section 3.0 of this Contract.** The Affordability Restriction will:
- 2.7.3.1 Give County a security interest in an amount equal to the amount of funds contributed by County under this Contract; and
- 2.7.4 Be superior to all monetary liens and encumbrances, except as specifically set forth in the Performance Deed of Trust, in the form of attached Exhibit C.
- 2.7.5 **This Section 2.7 will survive the termination, cancellation, expiration or revocation of this Contract, whether in whole or in part, and will remain in effect for the Affordability Period.**
- 2.8 **Operations and Management**. Developer will:
- 2.8.1 Begin marketing the Project at least 90 days before construction is completed.
- 2.8.2 Employ suitably trained and skilled personnel to perform all services under this Contract.
- 2.8.3 Throughout the initial lease-up and the Pima County Affordability Period, advertise available houses on Pima County’s Housing Search website:  
[www.pimacountyhousingsearch.org](http://www.pimacountyhousingsearch.org).
- 2.8.4 Determine the income eligibility of each tenant prior to executing a lease.
- 2.8.5 Retain documentation of tenant eligibility.
- 2.8.6 Collect rents.
- 2.8.7 Ensure that any vacant unit is secured and protected from vandalism.
- 2.8.8 Establish and maintain a property maintenance schedule to ensure that all houses and community amenities comply with ADA standards and applicable state, county and local standards at all times.



- 2.8.9 Maintain and repair the properties, including structures, physical plant, sidewalks, parking areas and landscaping, to ensure marketability and prevent deterioration, destruction or wasting. Keep grounds free of trash and debris.
- 2.8.10 Arrange for the on-site provision of support services to residents of the Project including, but not limited to, those designated in the Developer's Project Narrative and in the Bond Funding Application submitted to Pima County on March 1, 2016 and incorporated herein by reference.

## 2.9 **Monitoring and Evaluation.**

- 2.9.1 County may inspect any portion of the Project construction for substantial compliance with drawings and specifications and applicable code and standard provisions. Contractor will allow official County representatives reasonable access to the Project site during construction. The Project Manager and County Liaison will cooperate and consult with each other during Project construction.
- 2.9.2 County will have the right to monitor all activities and information sources in the management, fiscal and service systems of the Contractor and any subcontracted parties, relating to performance of duties and obligations under this Contract, to assure that Contractor is maintaining adequate and acceptable progress and systems, and to ensure that the funds provided to Contractor by County are being used effectively and efficiently to accomplish the purposes for which the funds were made available. County will have the right to review all contracts between Contractor and any subcontractors hired for the Project. Contractor will be responsible for delivering a copy of all contracts to the assigned Pima County Project Manager.
- 2.9.3 County may, at its discretion, monitor the Project operations at any time during the Affordability Period to verify that the Project is actively serving low-income households pursuant to the terms of this Contract.

## 3.0 **FINANCE AND PAYMENT**

- 3.1 County will allocate up to **\$400,000.00** of general obligation bond proceeds ("the Maximum Allocated Amount") for costs of the Project. County will reimburse Developer for the actual costs incurred by Developer for vertical construction of the structures and activities of the Project up to, but not in excess of, the Maximum Allocated Amount.
- 3.2 **No payment will be made by County until the following requirements have been met:**
  - 3.2.1 Execution of Lien. The Affordability Restriction described in paragraph 2.7.3 has been executed and recorded in the Office of the Pima County Recorder;
  - 3.2.2 Reimbursement Schedule. Within thirty (30) days after execution of this Contract, Developer has submitted to County a Reimbursement Schedule showing the anticipated dates and amounts of payment requests from Developer for reimbursement of Project expenses and a reasonable detailed Project Budget; and
  - 3.2.3 Proof of Insurance. Developer has furnished County proof that Developer has in place all the insurance policies required by Section 5.0 below, except that Developer will not be required to obtain Builder's Risk Insurance until vertical construction begins.
  - 3.2.4 Title Policy. Developer will assure issuance of a lender's policy of title insurance insuring the County's lien is valid and superior to all monetary liens and encumbrances on the Property other than the Construction Deeds of Trust, and subject only to such non-monetary encumbrances as are reasonably acceptable to County. County will, if Developer requests,

pay the premium for such insurance, but the cost of the premium will be deducted from the Allocated Maximum Amount.

3.3 County bond proceeds must be used only for the reasonable costs of the vertical construction of the structures in the Project (“the eligible expenses”).

3.4 None of the bond proceeds may be spent for management or administrative costs of the Project.

3.5 **Reporting and Payment Responsibilities.**

3.5.1 **Reimbursement Schedule.**

3.5.1.1 Developer will:

3.5.1.1.1. Within thirty (30) days after the execution of this Contract, submit to County a schedule (“the Reimbursement Schedule”) showing the anticipated dates and amounts of requests from Developer for reimbursement of expenses incurred and paid by Developer (“Reimbursement Requests”).

3.5.1.1.2. Within thirty (30) days of award of the last construction contract by Developer, Developer will provide County with a Final Reimbursement Schedule.

3.5.1.2 The Final Reimbursement Schedule may be combined with the Final Construction Schedule described in paragraph 2.3.7.1.3.

3.5.2 **Reimbursement Requests.** Developer will:

3.5.2.1 Within ten (10) days of the end of each month, starting on the date indicated in the Reimbursement Schedule, submit to County a Reimbursement Request for the previous month’s expenses. Each Reimbursement Request must:

3.5.2.1.1. Reference this contract number.

3.5.2.1.2. Be approved and signed by an authorized representative of Developer as true and accurate.

3.5.2.1.3. Be accompanied by supporting documentation which must include, but is not limited to:

3.5.2.1.3.1. A summary report of monthly expenditures;

3.5.2.1.3.2. Copies of invoices submitted by contractors and paid by Developer since the last Reimbursement Request; and

3.5.2.1.3.3. A certification that the invoices have been paid by Developer (less any retention held by Developer).

3.5.2.1.4. Be consistent with the Reimbursement Schedule.

3.5.2.1.5. Include a monthly progress report as set forth in paragraph 3.5.6 below.

3.5.2.2 Be responsible for verifying the accuracy of all invoices submitted by contractors.

3.5.2.3 Submit each Reimbursement Request to:

Community Development & Neighborhood Conservation Department  
Attn: Affordable Housing Project Coordinator  
c/o Pima County Housing Center  
801 W. Congress Street  
Tucson, AZ 85745

- 3.5.3 Payment. County will review each monthly Reimbursement Request and:
- 3.5.3.1 If approved, pay Developer within thirty (30) days after receipt of the Reimbursement Request (except for the final accounting and payment as set forth in paragraph 3.5.9 below); or
  - 3.5.3.2 If not approved, notify Developer of the reason for the disapproval (either orally or in writing) within fifteen (15) days after receipt of the Reimbursement Request. If the County does not object to the Reimbursement Request, it will pay the amount requested within thirty (30) days after receipt of the Reimbursement Request.
- 3.5.4 Withholding of Reimbursement. Notwithstanding any other provision herein, no reimbursement will be made for any Reimbursement Request until County is satisfied that the work for which the Reimbursement Request was submitted has been done satisfactorily, the general contractors and subcontractors have been paid (less any retention held by Developer), and the amounts requested have been verified and are for eligible expenses. Failure to pay the general contractor or any subcontractors for work contracted and performed may, in County's sole discretion, result in withholding of future reimbursements from the Developer and direct payment by County to the unpaid general contractor or subcontractor.
- 3.5.5 Temporary Payment Suspension. County may suspend payments under this Contract immediately for violation of contractual requirements, unsafe working conditions, violation of Federal or State law, or lack of reasonable progress on the Project. In the event of such suspension, Developer will assist County by providing information and documents to evaluate the status of the Project and to determine whether payments should be resumed or this Contract terminated.
- 3.5.6 Monthly Progress Reports.
- 3.5.6.1 Within ten (10) days of the end of each month, Developer will submit, a Monthly Progress Report, in the format attached as Exhibit D.
  - 3.5.6.2 **A Monthly Project Report must be submitted even if no reimbursement is being sought for the preceding month.**
  - 3.5.6.3 Reports will be submitted to the person and address set forth in paragraph 3.5.2.3.
- 3.5.7 Delays.
- 3.5.7.1 Developer will promptly notify County as soon as it becomes aware of a potential Project delay that may cause a deviation from the Construction Schedule and/or the Reimbursement Schedule.
  - 3.5.7.2 In the event of a deviation from the Reimbursement Schedule, County and Developer will establish a new Reimbursement Schedule which will be consistent with all applicable Federal Treasury Regulations.
- 3.5.8 Final Payment. Ten-percent (10%) of the Allocated Maximum Amount (\$40,000.00) will be retained by County and withheld from Developer until the occurrence of the following events:
- 3.5.8.1 Five percent (5.0%) of the Allocated Maximum Amount (\$20,000.00) will be disbursed to Developer upon receipt of the Certificates of Occupancy for all six houses.
  - 3.5.8.2 Five percent (5.0%) of the Allocated Maximum Amount (\$20,000.00) will be disbursed upon receipt of the Final Report and Final Accounting Statement described in paragraph 3.5.9 below.

### 3.5.9 Final Reporting and Accounting.

- 3.5.9.1 Within ninety (90) days after completion of Project and issuance of a Certificate of Occupancy for all houses in the Project, Developer will submit to County a final report in a format determined by County. The Final Report will include, but may not be limited to:
  - 3.5.9.1.1. Description of the Project as constructed and summary of the Project history (i.e. Project designer(s), engineer(s) and construction contractor(s); artist(s) responsible for the public art, if any, included in the Project; other funding sources; description of public participation; purpose and public benefit to be realized from the Project; other pertinent information);
  - 3.5.9.1.2. Photographs;
  - 3.5.9.1.3. Final as-built drawings;
  - 3.5.9.1.4. Reports or forms required by all other funding sources verifying the Project is completed;
  - 3.5.9.1.5. Certificates of Occupancy for all six houses;
  - 3.5.9.1.6. Evidence that the number of houses set forth in paragraph 2.7.2 are leased and occupied by a qualified household; and
  - 3.5.9.1.7. Evidence that the Project is being actively managed by Developer or its designated property manager.
- 3.5.9.2 At the same time Developer submits the Final Report, Developer will submit to County a detailed Final Accounting Statement of the funds expended on the Project and, if necessary, a final Reimbursement Request.
- 3.5.9.3 Failure to timely provide the Final Report and Final Accounting Statement may result in forfeiture of the retention amount still held by County and denial of the final reimbursement.
- 3.5.9.4 County will review the Final Accounting Statement and:
  - 3.5.9.4.1. If approved, pay Developer the amount set forth in the Final Reimbursement Request, if any, within forty-five (45) days after receipt of the Final Accounting Statement; or
  - 3.5.9.4.2. If not approved, notify Developer of the reason for the disapproval within fifteen (15) days after receipt of the Final Accounting Statement.

## 4.0 BOND FUNDING REQUIREMENTS

- 4.1 **Compliance.** Developer agrees to comply with all applicable provisions of Pima County Code Chapter 3.06 – *Bonding Disclosure, Accountability, and Implementation* and the Bond Ordinance, as they now exist or may hereafter be amended.
- 4.2 **Reports.** Any reports to be submitted by Developer to County in compliance with Pima County Code Chapter 3.06 or the Bond Ordinance must be provided in a format and schedule determined by County.

#### **4.3 Amendment to the Bond Ordinance.**

- 4.3.1 Developer will notify County of any event that would require an amendment of the Bond ordinance and will formally request that the Pima County Board of Supervisors hold a public hearing on the requested amendment.
- 4.3.2 County and Developer will follow the procedures for amendment of the Bond Ordinance set forth in Pima County Code Chapter 3.06, as it may be amended or renumbered from time to time, and the relevant sections of the Bond Ordinance.
- 4.3.3 In the event that the Board of Supervisors does not approve Developer's request for a Bond Ordinance amendment, Developer will complete the Project as defined by the Bond Ordinance and this Contract.

#### **4.4 Federal Treasury Regulations.**

##### 4.4.1 Developer acknowledges that:

- 4.4.1.1 County manages the expenditures of bond proceeds in order to qualify for a spending exception to the arbitrage rebate requirements of Sections 148 through 150 of the Internal Revenue Code of 1986 and the related regulations found in 26 CFR Part 1, §§1.148 through 1.150 as may be modified from time to time ("the Tax Exempt Bond Rules").
  - 4.4.1.2 Arbitrage rebate is affected by both the use of bond proceeds and the timing of bond-related expenditures.
- 4.4.2 Notwithstanding any other provision of this Contract, County may, in its sole discretion, either reallocate funds for the Project to other county bond-funded projects (which may, in some circumstances, result in a delay in payments under this Contract) or terminate this Contract as set forth in Section 7.0 below, if County determines that reallocation or termination is necessary or advantageous to County under the Tax Exempt Bond Rules in order to:
- 4.4.2.1 Qualify for a spending exception to the arbitrage rebate requirements; or
  - 4.4.2.2 Reduce the amount of any potential arbitrage rebate or penalty; or
  - 4.4.2.3 Manage County's Bond proceeds.

#### **5.0 INSURANCE**

- 5.1 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 Contract have been met. The below Insurance Requirements are minimum requirements for this Contract and in no way limit Developer's indemnity obligations under this Contract. 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 Contract. If necessary, Developer may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.

##### **5.2 Insurance Coverages and Limits:**

- 5.2.1 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.
- 5.2.2 Business Automobile Liability: Coverage for any owned, leased, hired, and/or non-owned autos assigned to or used in the performance of this Contract with minimum limits not less than \$1,000,000 Each Accident.

5.2.3 Workers' Compensation (WC) and Employers' Liability:

5.2.3.1 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.

5.2.3.2 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.

5.3 Additional Coverage Requirements:

5.3.1 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.

5.3.2 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.

5.3.3 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.

5.3.4 Primary Insurance: The Required Insurance policies, with respect to any claims related to this Contract, 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).

5.3.5 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.

5.3.6 Builder's Risk Insurance. When construction work begins, Developer shall obtain Builder's Risk Insurance in an amount equal to the outstanding amount of the contractual obligations entered into for the Project, with coverage written on an all risk, replacement cost basis and including coverage for soft costs, flood and earth movement. Developer must maintain Builder's Risk Insurance until final payment has been made from all sources.

5.3.7 Performance Bond. Developer will provide a Performance Bond for not less than one hundred percent (100%) of the Maximum Allocated Amount, or another method or assurance, approved by Pima County Board of Supervisors, that the Project will be completed.

#### 5.4 **Verification of Coverage:**

5.4.1 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:

5.4.1.1 The Pima County tracking number for this Contract, which is shown on the first page of the Contract, and a project description, in the body of the Certificate,

5.4.1.2 A notation of policy deductibles or SIRs relating to the specific policy, and

5.4.1.3 Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation waiver endorsements for the County and its Agents.

5.4.2 Each Required Insurance policy and appropriate endorsements must be in effect not less than 15 days prior to commencement of work under this Contract. 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 Contract.

5.4.3 County reserves the right to, at any time, require complete copies of any or all Required Insurance policies.

5.4.4 **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.

5.5 **Approval and Modifications:** The Pima County Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal Contract 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.

#### 6.0 **INDEMNIFICATION**

6.1 Developer 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 Developer, its agents, employees or anyone acting under its direction or control or on its behalf in connection with performance of this Contract and the Project.

6.2 **Preexisting Conditions.** To the fullest extent permitted by law, Developer will indemnify, defend and hold County, its boards, officers, departments, employees and agents, harmless from and against any claims and damages, as fully set out above, resulting from or arising out of the existence of any substance, material or waste, regulated pursuant to federal, state or local environmental laws, regulations or ordinances, that is present on, in or below or originated from property owned or controlled by Developer prior to the execution of this Contract.

- 6.3 **Notice of Claim.** Each party will notify the other in writing within thirty (30) days of the receipt of any claim, demand, suit or judgment against the receiving party for which the receiving party intends to invoke the provisions of this Section 6.0. Each party shall keep the other party informed on a current basis of its defense of any claims, demands, suits, or judgments under this Section 6.0.
- 6.4 Developer warrants that services provided under this Contract are non-infringing. Developer will indemnify, defend and hold County harmless from any claim of infringement arising from services provided under this Contract or from the provision, license, transfer or use for their intended purpose of any products provided under this Contract.
- 6.5 **This Section 6.0 will survive the termination, cancellation, expiration or revocation, whether in whole or in part, of this Contract.**

## 7.0 TERMINATION

- 7.1 **Termination for Convenience:** County reserves the right to terminate this Contract at any time and without cause by serving upon Developer thirty (30) days advance written notice of such intent to terminate. 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.
- 7.2 **Termination for Cause:** This Contract may be terminated at any time without advance notice and without further obligation by the County when the Developer is in default of any provision of this Contract.
- 7.3 **Default.** If Developer at any time defaults in the performance of any of Developer's obligations under this Contract, County may suspend payments to Developer as set forth in paragraph 3.5.5 above until such time as the default is cured. In addition, County may terminate this Contract if any default is not cured within sixty (60) days of Developer's receipt of a written notice from County stating the nature of the default.
- 7.4 **Non-Appropriation:** Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Developer, other than for services rendered prior to termination.
- 7.5 **Suspension:** County reserves the right to suspend Developer's performance and payments under this Contract immediately upon notice delivered to Developer's designated agent in order to investigate Developer's activities and compliance with this Contract. 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 contract will be immediately terminated or that performance may be resumed.
- 7.6 **Arbitrage Rebate Requirements.** The County reserves the right to cease payments to Developer and unilaterally terminate this Contract if the County determines, in County's sole discretion, that any action or inaction on the part of Developer is likely to occur that would adversely affect the election made by the County under the Tax Exempt Bond Rules relating to exceptions for arbitrage rebate.
- 7.7 **Effect of Termination.** Any termination of this Contract will not relieve any party from liability or costs already incurred under this Contract.

## 8.0 CANCELLATION FOR CONFLICT OF INTEREST

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



## **9.0 BOOKS, RECORDS AND INSPECTIONS**

- 9.1 Books and Records. Developer must keep and maintain proper and complete books, records and accounts of the Project. For bond purposes, the Project books and records must continue to be maintained for a period of three (3) years after final payment of the bonds issued for the Project. The bonds funding the Project are expected to be fully paid by June 30, 2032, but may be subject to refunding.
- 9.2 Inspection and Audit. The books, records and accounts of the Project must be available for inspection and audit by duly authorized representatives of County at all reasonable times during the period in which said books, records and accounts must be maintained by the Developer.
- 9.3 Indemnification. Developer must indemnify and hold the County harmless from and against any amount required to be paid to the Internal Revenue Service or any governmental agency arising out of the failure by Developer to maintain such records.

## **10.0 COMPLIANCE WITH LAWS**

- 10.1 Developer and County will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract.
- 10.2 The laws and regulations of the State of Arizona will govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract must be brought in a court of the State of Arizona in Pima County.
- 10.3 Any changes in the governing laws, rules, and regulations during the terms of this Contract will apply, but do not require an amendment.

## **11.0 INDEPENDENT CONTRACTOR**

The status of Developer will be that of an independent contractor. Neither Developer nor Developer'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. Developer will be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and will indemnify and hold County harmless from any and all liability which County may incur because of Developer's failure to pay such taxes. Developer will be solely responsible for its program development, operation, and performance.

## **12.0 SUBCONTRACTORS**

- 12.1 Except as provided in paragraph 12.2, Developer will not enter into any subcontracts for any services to be performed under this Contract 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.
- 12.2 Prior written approval is not required for the purchase of supplies that are necessary and incidental to Developer's performance under this Contract.
- 12.3 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 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.
- 12.4 Developer must include the provision set forth in paragraph 3.6 in all contracts between Developer and its subcontractors providing goods or services pursuant to this Contract. 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.

### **13.0 AUTHORITY TO CONTRACT**

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

### **14.0 NOTICE**

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

#### **County:**

C.H. Huckelberry, County Administrator  
130 W. Congress, 10<sup>th</sup> Floor  
Tucson, AZ 85701

Robin Brigode, Clerk of the Board  
130 W. Congress, 5<sup>th</sup> Floor  
Tucson, AZ 85701

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

#### **DEVELOPER:**

Pima County Community Land Trust  
Attn: Maggie Amado-Tellez, Ex. Director  
801 W. Congress Street  
Tucson, AZ 85745

### **15.0 ASSIGNMENT**

Developer will not assign its rights to this Contract 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.

### **16.0 NON-DISCRIMINATION**

- 16.1 Developer 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.
- 16.2 During the performance of this Contract, 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.

### **17.0 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 Contract.

## **18.0 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 Contract 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.

## **19.0 OTHER DOCUMENTS**

- 19.1 In entering into this Contract, Developer and County have relied upon information provided in Developer's proposal submitted February 26, 2016, and with revisions submitted October 25, 2016 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 said Solicitation.
- 19.2 The documents set forth in Paragraph 19.1 are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this Contract, 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.

## **20.0 PUBLIC INFORMATION**

- 20.1 Pursuant to Arizona Public Records law, A.R.S. § 39-121 *et seq.*, documents submitted by Developer 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.
- 20.2 In the event that County receives a public records request pursuant to A.R.S. § 39-121 *et seq.* for documents Developer submitted to County, County will notify Developer on the same day the request is made or as soon as possible thereafter.
- 20.3 County will release Developer's records ten (10) business days after the date of notice to the Developer, unless Developer 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.
- 20.4 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 Developer nor will County be in any way financially responsible for any costs associated with securing such an order.

## **21.0 LEGAL ARIZONA WORKERS ACT COMPLIANCE**

- 21.1 Developer hereby warrants that it will at all times during the term of this Contract 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 contract likewise complies with the State and Federal Immigration Laws.
- 21.2 County will have 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.

- 21.3 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, will be deemed to be a material breach of this Contract subjecting Developer to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, 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, (subject to County approval if Minority and Women Business E preferences apply) as soon as possible so as not to delay project completion.
- 21.4 Developer will advise each subcontractor of County's rights, and the Subcontractor's obligations, under this Section 21.0 by including a provision in each subcontract substantially in the following form:

*"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."*

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

## **22.0 REMEDIES**

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

## **23.0 NO THIRD PARTY BENEFICIARIES**

Nothing in the provisions of this Contract is intended to create duties or obligations to or rights in third parties not parties to this Contract or effect the legal liability of either party to the Contract by imposing any standard of care different from the standard of care imposed by law.

## **24.0 ISRAEL BOYCOTT CERTIFICATION**

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

## **25.0 SEVERABILITY**

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

**26.0 ENTIRE AGREEMENT**

- 26.1 This document constitutes the entire agreement between the parties pertaining to the subject matter hereof.
- 26.2 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 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.
- 26.3 This Contract 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 Contract on the date written below.

PIMA COUNTY

DEVELOPER

\_\_\_\_\_

\_\_\_\_\_

Chair, Board of Supervisors

Signature

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

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

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

ATTEST

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

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

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Director, Community Development  
and Neighborhood Conservation

APPROVED AS TO FORM:

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

**EXHIBIT C**

**PERMITTED ENCUMBRANCES**

None.

END OF EXHIBIT C

Monthly Progress Report

CT-CD-17\* \_\_\_\_\_

Project Name: PCCLT – ONTARIO PROJECT

Professional Services Status:

Contract Awarded:  Yes  No Consultant: \_\_\_\_\_

Design Start Date      Design End Date      % Complete      Total Value of Work Completed

		%	\$
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Construction Procurement Status:

In Process:  Yes  No Procurement Type: \_\_\_\_\_

Procurement Start Date      Procurement End Date      % Complete

		%
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Construction Status:

Contract Awarded:  Yes  No Contractor: \_\_\_\_\_

Construction Start Date      Construction End Date      % Complete      Total Value of Work Completed

		%	\$
--	--	---	----

Closeout Status:

Punch List Complete:  Yes  No Date open to Public: \_\_\_\_\_

Closeout Start Date      Closeout End Date      % Complete      Total Value of Work Completed

		%	\$
--	--	---	----

Project Status Narrative

Signature: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

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