



BOARD OF SUPERVISORS AGENDA ITEM REPORT CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 08/19/2019, Addendum

* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Southern Arizona AIDS Foundation

***Project Title/Description:**

Southern Arizona AIDS Foundation: Affordable Housing Expansion and Rehabilitation for People Living with HIV/AIDS ("the Project").

This contract can be found in OnBase by searching Contracts 19*525 in Doc_ID_AMS.

Confidential Location

***Purpose:**

Complete roofing and security for public facility improvements at a 20-unit supportive housing apartment complex that serves special populations.

Attachment: Contract Number CT-CD-19-525

***Procurement Method:**

Processed per Board of supervisors Policy D29.6.IIIA.

***Program Goals/Predicted Outcomes:**

Goal: Create suitable, safe and healthy living environments for households living with HIV/AIDS.

Predicted outcome: Permanent supportive affordable housing units will be more energy efficient, safe, healthy and less expensive to operate for the residents and Subrecipients.

***Public Benefit:**

Upon completion, the Project will meet the U.S.. Department of Housing and Urban Development ("HUD") criteria. Community Development Block Grant ("CDBG") National Objective by serving low- to moderate-income persons by completing needed facility improvements.

***Metrics Available to Measure Performance:**

Twenty (20) permanent supportive affordable housing units will have improved safety and energy efficiency for the benefit of the resident households affected by HIV/AIDS.

***Retroactive:**

Yes, to August 1, 2019. Previous contract language did not allow for an amendment and as a result , a new contract had to be drafted.

TO: COB - 8-14-19
Rev. - 1
Pgs. - 24 (11)

Addendum

AUG 14 19M 10:07 PM
PCD/KCF/BD

Contract / Award InformationDocument Type: CT Department Code: CD Contract Number (i.e., 15-123): 19-525Effective Date: 08/01/2019 Termination Date: 07/31/2020 Prior Contract Number (Synergen/CMS): _____☒ Expense Amount: \$* 141,647.00 ☐ Revenue Amount: \$ _____*Funding Source(s) required: U.S. Department of Housing and Urban Development, HUDFunding from General Fund? ☐ Yes ☒ No If Yes \$ _____ % _____Contract is fully or partially funded with Federal Funds? ☒ Yes ☐ NoIf Yes, is the Contract to a vendor or subrecipient? subrecipientWere insurance or indemnity clauses modified? ☐ Yes ☒ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No

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

Amendment / Revised Award Information

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

Amendment No.: _____ AMS Version No.: _____

Effective Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

☐ Expense or ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$ _____Is there revenue included? ☐ Yes ☐ No If Yes \$ _____

*Funding Source(s) required:

Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____**Grant/Amendment Information** (for grants acceptance and awards) ☐ Award ☐ Amendment

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

Effective Date: _____ Termination Date: _____ Amendment Number: _____

☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____

*All Funding Source(s) required:

*Match funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____*Match funding from other sources? ☐ Yes ☐ No If Yes \$ _____ % _____

*Funding Source: _____

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

Contact: Joel Viers, Prog. Coord.; Joel Gastelum, Prog. Mgr. 4-6750, Dewey Cooper, Contract Specialist 4-2772Department: Community Development & Neighborhood Conservation Telephone: 724-6767Department Director Signature/Date: [Signature] 7/17/19Deputy County Administrator Signature/Date: [Signature] 7/17/2019County Administrator Signature/Date: [Signature] 7/17/19
(Required for Board Agenda/Addendum Items)

Pima County Community Development and Neighborhood Conservation Department

Project: *Affordable Housing Expansion & Rehabilitation for People Living with HIV/AIDS*
HUD CDBG Public Facilities(LMC)

Contractor: Southern Arizona AIDS Foundation
375 South Euclid Avenue
Tucson, Arizona 85719

Amount: \$141,647.00

Contract No.: CT-CD-19-525

Funding: U.S. Department of Housing and Urban Development

Contract Term: August 1, 2019 to July 31, 2020

DUNS No.: 197335730

Research or Development: ☐ Yes ☒ No

B-15-UC-04-0502 & B-16-UC-04-0502

Required Match: ☐ Yes ☒ No

Match Amount:

Indirect Cost Rate: ☐ Federal

☐ NICR

☐ de minimis

☒ None

Status of Contractor:

☒ Subrecipient

☐ Contractor

CFDA	Program Description	Nation Funding	Pima County Award
14.218	Community Development Block Grant/Entitlement Communities (CDBG)	FY15 \$2,095,100,000.00	\$2,592,446.00
		FY16 \$3,014,354,773.97	\$2,613,490.00

GRANT FUNDING AGREEMENT**1.0 PARTIES, BACKGROUND AND PURPOSE**

1.1 This Agreement is entered into by and between Pima County ("County"), a body politic and corporate of the State of Arizona and Southern Arizona AIDS Foundation, ("Subrecipient"), a non-profit corporation doing business in the State of Arizona.

1.2 Authority.

1.2.1 County is authorized by A.R.S. §§ 11-254.04, 11-251 (5) and 11-251 (17), to spend public monies to improve and enhance the economic welfare and health of the inhabitants of the County.

1.2.2 County applied for and received Community Development Block Grant ("CDBG") funds in the amount of \$2,592,446 for FY 2015-2016 and \$2,613,490 for FY 2016-2017 from the U.S. Department of Housing and Urban Development ("HUD"), under Title I of the Housing and Community Development Act of 1974, as amended (Public Law 93-383).

1.3 Solicitation and Response.

1.3.1 Under solicitation numbers CDNC-12-18-14-CDBG-ESG and CDNC-10-30-15-CDBG-ESG ("the Community Planning Applications"), County sought proposals for programs and

activities that would qualify for CDBG funding during Federal Fiscal Years (“FY”) 2015-2016 and 2016-2017, respectively.

- 1.3.2 Subrecipient submitted satisfactory responses to both the 2015-2016 and 2016-2017 Community Planning Applications.
- 1.3.3 County has determined that the services or activities proposed in Subrecipient’s response to the Community Planning Application are eligible for CDBG funding and in the best interests of the residents of Pima County.

1.4 Background and Purpose.

1.4.1 On May 5, 2015 the Pima County Board of Supervisors:

- 1.4.1.1 Authorized inclusion of Subrecipient’s proposal for use of CDBG funds in the 2015-2016 Annual Action Plan that County submitted to HUD to obtain the FY 2015-2016 CDBG funds.
- 1.4.1.2 Passed Resolution No. 2015-20 approving the allocation of FY 2015-2016 CDBG funds to Subrecipient for improvements to Subrecipient’s facility.

1.4.2 On May 3, 2016 the Pima County Board of Supervisors:

- 1.4.2.1 Authorized inclusion of Subrecipient’s proposal for use of CDBG funds in the 2016-2017 Annual Action Plan that County submitted to HUD to obtain the FY 2016-2017 CDBG funds.
- 1.4.2.2 Passed Resolution No. 2016-32 approving the allocation of FY 2016-2017 CDBG funds to Subrecipient for improvements to Subrecipient’s facility.

- 1.5 CDBG funds in the amount of **\$141,647.00** have been consolidated from both funding years and allocated to Subrecipient for facility improvements.

2.0 TERM, EXTENSIONS AND AMENDMENTS

- 2.1 Original Term. This Agreement will commence on August 1, 2019 and will terminate on July 31, 2020 (the “Initial Term”). “Term,” when used in this Agreement, means the Initial Term plus any exercised Extension Options.
- 2.2 Extension Options. County may renew this Agreement for up to a total of five (5) years to coincide with the term of the County’s Consolidated Plan submitted to HUD (an “Extension Option”). An Extension Option will be effective only upon execution by the Parties of a formal written amendment.
- 2.3 This Agreement may be modified, amended, altered or extended only by a written amendment signed by the parties. Any amendment to the Agreement must be approved by the County before any services under the amendment commences.
- 2.4 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 change the specified purpose, outcomes or the total compensation provided through this Agreement and do not in any way increase the direct or indirect liability of the County under this Agreement.
- 2.5 Notwithstanding paragraphs 2.1 and 2.2 above, the terms of this Agreement will survive and remain in effect during any period that Subrecipient has control over CDBG funds, including program income.

3.0 SCOPE OF SERVICES

3.1 Subrecipient will:

- 3.1.1 Provide the County with the services described in the attached **Exhibit A**.
- 3.1.2 Employ suitably trained and skilled personnel to perform all services under this Agreement.
- 3.1.3 Perform its duties in a humane and respectful manner and in accordance with any applicable professional standards.
- 3.1.4 Unless otherwise provided for herein, the personnel delivering services pursuant to this Agreement will:
 - 3.1.4.1 Be employees or volunteers of the Subrecipient;
 - 3.1.4.2 Satisfy any qualifications set forth in this Agreement; and
 - 3.1.4.3 Be covered by personnel policies and practices of Subrecipient.
- 3.1.5 Obtain and maintain all required licenses, permits and authority required for performance under this Agreement
- 3.1.6 Maintain an accounting manual that describes its financial procedures in sufficient detail to ensure that its financial practices are easily understood.
- 3.1.7 Undertake the same obligations to County, as County does to HUD pursuant to the 2015-2016 Annual Action Plan 2016-2017 Annual Action Plan and assurances. Subrecipient will hold County harmless against any injury that County may suffer with respect to HUD due to any failure on the part of Subrecipient to fulfill obligations to HUD.

3.2 Confidentiality. Subrecipient:

- 3.2.1 Understands and acknowledges that client and applicant files and information collected pursuant to the terms of this Agreement are private and the use or disclosure of such information, when not directly connected with the administration of County's or Subrecipient's responsibilities with respect to services provided under this Agreement is prohibited, unless written consent is obtained from the individual or, in the case of a minor, from the responsible parent or guardian.
 - 3.2.2 Will provide access to these files only to persons with a specific CDBG-related need for the information.
 - 3.2.3 Will observe and abide by all applicable State and Federal statutes and regulations regarding use or disclosure of information including, but not limited to, information concerning applicants for and recipients of contract services.
- 3.3 Subrecipient certifies that no individual or agent has been employed or retained to solicit or secure this Agreement for commission, percentage, brokerage or contingent fee except a bona fide employee whose job duties include securing business.
 - 3.4 No program funded under this Agreement may impair existing contracts for services or collective bargaining agreements or be inconsistent with the terms of a collective bargaining agreement without the written concurrence of the labor organization and employer concerned.

4.0 MONITORING AND EVALUATION

- 4.1 County will monitor all activities and information sources in the management, fiscal, and services systems of Subrecipient and any subcontracted parties relating to performance of duties and obligations under this Agreement to ensure that Subrecipient is:
 - 4.1.1 Making adequate and acceptable progress in the provision of services;

- 4.1.2 Maintaining adequate and acceptable systems to document services and expenditures; and
- 4.1.3 Using the funds provided pursuant to this Agreement effectively and efficiently to accomplish the purposes for which funds were made available.
- 4.2 Subrecipient must cooperate in the monitoring and evaluation process by County and/or HUD.
- 4.3 Subrecipient must assist County in providing reports and documentation to HUD related to Subrecipient's performance and, where applicable, the impact of the CDBG-funded activities on the community.
- 4.4 If monitoring and evaluation finds that Subrecipient's performance is substandard, Subrecipient will be in default of this Agreement. If Subrecipient fails to take appropriate actions to correct the default within fifteen (15) calendar days from date of notice, this Agreement may be suspended or terminated.
- 4.5 To the greatest extent permissible by law, County, and any authorized federal, state or local agency, including, but not limited to, the HUD and the Comptroller of the United States, will at all reasonable times have the right of access to Subrecipient's facility, books, documents, papers, or other records which are pertinent to this Agreement, in order to make audits, examinations, excerpts and transcripts for the purpose of evaluating Subrecipient's performance and Subrecipient's compliance with this Agreement.

5.0 COMPENSATION AND PAYMENT

- 5.1 In consideration for services specified in **Exhibit A** of this Agreement, County agrees to pay Subrecipient up to **\$141,647.00** ("the Maximum Allocated Amount").
- 5.2 Payment will be made from CDBG Grant(s) County has been awarded from HUD ("the awarding agency") as follows:

CDBG Grant Year	Maximum Allocated Amount
FY 2015-2016	\$ 43,226.00
FY 2016-2017	\$98,421.00
TOTAL	\$141,647.00

- 5.3 Payment of the full Maximum Allocated Amount is subject to the CDBG funds being made available to County for this Agreement. The Maximum Allocated Amount may be decreased at any time due to reduction, termination, or any other changes in funding. Unless specifically authorized by County, unexpended funds will not be carried over into another fiscal year.
- 5.4 **Pursuant to the agreement between HUD and County (Pima County Contract Nos. B-15-UC-04-0502 and B-16-UC-04-0502) and the Pima County Board of Supervisor's approval of this allocation of CDBG funds to Subrecipient on May 5, 2015 and May 3, 2016, Subrecipient may be reimbursed for eligible costs associated with activities under this Agreement from and after May 1, 2019.**
- 5.5 Subrecipient **must submit a request for reimbursement every month**, even if no funds are being requested for the prior month. Requests for reimbursement are due as follows:

Agreement Month	Due date for Request for Reimbursement
January through April & July through December	30 calendar days from end of month
May	June 15
June	July 7

- 5.6 Each monthly request for reimbursement must:
 - 5.6.1 Reference this Agreement number.

- 5.6.2 Be approved and signed by both the person (s) that prepared the request and an authorized manager, supervisor or executive of the Subrecipient to insure proper internal financial controls.
- 5.6.3 Be for services and costs as identified in **Exhibit A**.
- 5.6.4 Include the amount of:
 - 5.6.4.1 CDBG accrued expenditures, if any;
 - 5.6.4.2 Program income, as defined by the awarding agency; and
 - 5.6.4.3 All other fiscal resources applied to expenses incurred in providing services under this Agreement.
- 5.6.5 Be accompanied by documentation which must include, but is not limited to:
 - 5.6.5.1 A summary report of monthly expenditures by expense categories as shown in approved budget in **Exhibit A** of this Agreement.
 - 5.6.5.2 Copies of invoices and checks (front and back) to support all purchases of goods or services.
 - 5.6.5.3 If reimbursement is authorized for travel, detailed travel reports to support all travel expenses.
 - 5.6.5.4 Any other documentation requested by County.
- 5.6.6 Be accompanied by a hardcopy, with original signatures, of the Financial Status Report and Request for Funds. County will provide Subrecipient with a form similar to that attached hereto as **Exhibit B** upon execution of this Agreement.
- 5.6.7 If reimbursement is authorized for personnel costs, the monthly request for reimbursement must include, the following documentation for each pay period:
 - 5.6.7.1 Time sheets or other records, signed by the employee and the employee's immediate supervisor with direct knowledge of employee's efforts for this Agreement, that specify the days, hours per day and total hours worked on the grant; and
 - 5.6.7.2 Accounting system report(s) specifying rate of pay and costs of employer paid benefits.
- 5.7 If Subrecipient is required to provide matching funds under the terms of the awarding agency, Subrecipient must also provide the documentation described in paragraph 5.6 for the matching funds.
- 5.8 **Subrecipient must utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.** Subrecipient may not bill the County for costs which are paid by another source. Subrecipient must notify County within ten (10) days of receipt of alternative funding for costs which would otherwise be subject to payment pursuant to this Agreement.
- 5.9 If each request for payment includes adequate and accurate documentation, County will generally pay Subrecipient within thirty (30) days from the date invoice is received. Subrecipient should budget cash needs accordingly.
- 5.10 County may, at its sole discretion:
 - 5.10.1 Determine the acceptability and progress of work performed and determine the resulting entitlement to payment of each request for reimbursement.
 - 5.10.2 Liquidate funds available under this Agreement for costs incurred by County on behalf of Subrecipient.

5.10.3 **Deny full payment** for requests for reimbursement that are submitted to County after the date set forth in paragraph 5.5. County may deduct its processing costs or delay-related damages in connection with a request for payment submitted after that date.

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

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

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

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

5.12 **REQUEST FOR FINAL PAYMENT** for compensation earned and/or eligible costs incurred must be submitted to the County within **15 working days after the end of the Agreement term**. The request must meet the requirements set forth in paragraph 5.6 and include a report summarizing Subrecipient's performance during the term of the Agreement.

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

5.13.1 Subrecipient has completed and submitted a W-9 Taxpayer Identification Number form;

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

5.13.3 This Agreement is fully executed; and

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

5.14 Changes between budget line items. Changes between budget line items of no more than 15% may be granted by and at the sole discretion of the Director of Community Development and Neighborhood Conservation ("CDNC") or designee. The following provisions apply:

5.14.1 The change may not increase or decrease the maximum allocated amount.

5.14.2 Subrecipient must submit a written request for the line item change on or before May 15 of the contract year. The written request must contain a detailed explanation of:

5.14.2.1 The reason the change is necessary; and

5.14.2.2 How the specified purpose, program(s), metrics, or outcomes set forth in this Agreement will continue to be met, despite the requested change.

5.14.3 The change must be for future expenditures that are not part of the current existing and approved budget(s). The change may not be to cover unbudgeted expenditures incurred by Subrecipient prior to the approval of the written request for a budget line item change.

5.14.4 If the Director of CDNC or designee approves the request for the budget line item change, **the change will not be effective, nor will compensation under the change be provided, until the date set forth in the written approval.**

5.15 Any change that increases or decreases the maximum allocate amount or that changes the Scope of Work in any way will require a contract amendment. **Such change will not be effective, nor will**

compensation under the change be provided, until the contract amendment is fully executed by both parties.

- 5.16 Goods and services provided in excess of the budgeted line item or the maximum allocated amount without prior authorization as set forth in paragraphs 5.14 and 5.15 above will be at Subrecipient's own risk.
- 5.17 Disallowed Charges or Cost principles.
- 5.17.1 Pursuant to 2 CFR §2400.101, unless excepted under 24 CFR chapters I through IX, the cost principles set forth in 2 CFR part 200, Subpart E, as may be modified by amendments and additions, will be used to determine whether an incurred cost will be reimbursed under this Agreement.
- 5.17.2 **Subrecipient must reimburse County for improper, unallowable or unsubstantiated costs discovered as a result of audit or otherwise within thirty (30) days following demand for reimbursement by County.**
- 5.18 For the period of record retention required under Section 21.0 -- Books and Records, County reserves the right to question any payment made under this Section 5.0 and to require reimbursement by setoff or otherwise for payments determined to be improper or contrary to the Agreement or law.

6.0 PROGRAM INCOME

- 6.1 County does not anticipate that program income, as defined by the awarding agency, will be generated under the activities of this Agreement.
- 6.2 In the event that activities under this Agreement do generate program income or program income is authorized, Subrecipient must:
- 6.2.1 Report to County all program income, as defined at 24 CFR § 570.500(a), generated and received as a result of activities carried out with the CDBG-funds provided pursuant to this Agreement. These reports are due quarterly.
- 6.2.2 Return program income to County within 15 days of the end of each month, unless otherwise specified in **Exhibit A**.

7.0 INSURANCE

- 7.1 Subrecipient will procure and maintain at its own expense insurance policies (the "Required Insurance") satisfying the below requirements (the "Insurance Requirements") until all of its obligations under this Agreement have been met. The below Insurance Requirements are minimum requirements for this Agreement and in no way limit Subrecipient's indemnity obligations under this Agreement. The County in no way warrants that the required insurance is sufficient to protect the Subrecipient for liabilities that may arise from or relate to this Agreement. If necessary, Subrecipient may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.

7.2 Insurance Coverages and Limits:

- 7.2.1 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.
- 7.2.2 Business Automobile Liability: Coverage for any owned, leased, hired, and/or non-owned autos assigned to or used in the performance of this Agreement with minimum limits not less than \$1,000,000 Each Accident.

7.2.3 **Workers' Compensation (WC) and Employers' Liability:**

7.2.3.1 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.

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

7.3 **Additional Insurance Requirements:**

7.3.1 **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.

7.3.2 **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 Subrecipient. 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.

7.3.3 **Wavier 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 Subrecipient.

7.3.4 **Primary Insurance:** The Required Insurance policies, with respect to any claims related to this Agreement, must be primary and must treat any insurance carried by County as excess and not contributory insurance. The Required Insurance policies may not obligate the County to pay any portion of a Subrecipient's deductible or Self Insurance Retention (SIR).

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

7.4 **Verification of Coverage:**

7.4.1 Insurer or Broker of Subrecipient 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:

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

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

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

7.4.2 Each Required Insurance policy and appropriate endorsements must be in effect not less than 15 days prior to commencement of work under this Agreement. A renewal certificate must be provided to County not less than 15 days prior to the policy's expiration date to include actual copies of the additional insured and wavier of subrogation endorsements. Failure to maintain the Required Insurance, or to provide evidence of renewal, is a material breach of this Agreement.

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

7.4.4 Cancellation Notice: Subrecipient'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. Subrecipient 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.

7.5 Approval and Modifications: The Pima County Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal Agreement amendment, but the approval must be in writing. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, or the County's receipt of any other information from the Subrecipient, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

8.0 INDEMNIFICATION

8.1 To the fullest extent permitted by law, Awardee will defend, indemnify and hold harmless Pima County, and any related taxing district, and the officials and employees and each of them (collectively, "Indemnatee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees)(collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Awardee or any of Awardee's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation law or arising out of the failure of Awardee to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnatee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnatee, be indemnified by Awardee from and against any and all claims. Awardee is responsible for primary loss investigation, defense and judgement costs for any claim to which indemnity applies. This indemnity will survive the expiration or termination of this Agreement.

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

9.0 COMPLIANCE WITH LAWS

9.1 Compliance with Laws; Changes. Subrecipient will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. Any changes in the governing laws, rules, and regulations during the terms of this Agreement will apply, but do not require an amendment.

9.2 Licensing. Subrecipient warrants that it is appropriately licensed to provide the services under this Agreement and that its subcontractors will be appropriately licensed.

9.3 Choice of Law; Venue. The laws and regulations of the State of Arizona will govern the rights of the parties, the performance of this Agreement, and any disputes hereunder. Any action relating to this Agreement must be brought in a court of the State of Arizona in Pima County.

9.4 Compliance with 24 CFR 570. Subrecipient will comply with the requirements of 24 CFR 570, including subpart K of these regulations, except the Subrecipient does not assume:

- 9.4.1 County's environmental responsibilities described in 24 CFR 570.604; and
- 9.4.2 County's responsibility for initiating the review process under the provisions of 24 CFR Part 52.
- 9.5 Use of CDBG Funds. Subrecipient warrants that CDBG funds provided or personnel employed in the administration of the program funded under this Agreement will not be used for:
 - 9.5.1 Political activities;
 - 9.5.2 Inherently religious activities;
 - 9.5.3 Lobbying to influence the outcome of any election or the award of any federal contract, grant, loan or cooperative agreement (*see* Federal Standard Form LLL, "Disclosure of Lobbying Activities");;
 - 9.5.4 Political patronage; or
 - 9.5.5 Nepotism activities.
- 9.6 Compliance with Federal Law, Rules and Regulations. Subrecipient will comply with the applicable provisions of:
 - 9.6.1 Davis-Bacon Act (Public Law 107-217), as amended;
 - 9.6.2 Contract Work Hours and Safety Standards Act (40 USC 327 *et seq.*);
 - 9.6.3 Copeland Anti-Kick Back Act (18 USC 874 *et seq.*);
 - 9.6.4 Section 3 of the HUD Act of 1968 as amended; and
 - 9.6.5 All rules and regulations applicable to the Acts set forth above.
- 9.7 Cooperation. Subrecipient will fully cooperate with County, HUD and any other federal agency in the review and determination of compliance with the above provisions.

10.0 INDEPENDENT CONTRACTOR

- 10.1 Subrecipient is an independent contractor. Neither Subrecipient nor any of Subrecipient's officers, agents, or employees will be considered an employee of Pima County or be entitled to receive any employment-related benefits, or assert any protections, under the Pima County Merit System.
- 10.2 Subrecipient is responsible for paying all federal, state and local taxes on the compensation by Subrecipient under this Agreement and will indemnify and hold County harmless from any and all liability which County may incur because of Subrecipient's failure to pay such taxes.
- 10.3 Subrecipient will be solely responsible for its program development, operation, and performance.

11.0 SUBCONTRACTOR

- 11.1 Except as provided in paragraph 11.2, Subrecipient will not enter into any subcontracts for any services to be performed under this Agreement without County's prior written approval of the subcontract. Subrecipient must follow all applicable Federal, State, and County rules and regulations for obtaining subcontractor services.
- 11.2 Prior written approval is not required for the purchase of supplies that are necessary and incidental to Subrecipient's performance under this Agreement.
- 11.3 Subrecipient will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts, any of them, may be liable to the same extent that the Subrecipient is responsible for the acts and omissions of persons directly employed by it. Nothing in this Agreement will create any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.

- 11.4 Subrecipient must include the provision set forth in paragraph 4.5 in all contracts between Subrecipient and its subcontractors providing goods or services pursuant to this Agreement. Subrecipient will be responsible for subcontractors' compliance with that provision and for any disallowances or withholding of reimbursements resulting from noncompliance of said subcontractors with the provision.

12.0 ASSIGNMENT

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

13.0 NON-DISCRIMINATION

- 13.1 Subrecipient will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Agreement, including flow down of all provisions and requirements to any subcontractors.
- 13.2 During the performance of this Agreement, Subrecipient will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
- 13.3 Unless exempt under federal law, Awardee will comply with:
- 13.3.1 Titles VI and VII of the Civil Rights Act of 1964 as amended;
 - 13.3.2 The Age Discrimination in Employment Act;
 - 13.3.3 Section 504 of the Rehabilitation Act of 1973, as amended; and
 - 13.3.4 The requirements of the Fair Labor Standards Act of 1938, as amended.

14.0 AMERICANS WITH DISABILITIES ACT

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

15.0 AUTHORITY TO CONTRACT

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

16.0 FULL AND COMPLETE PERFORMANCE

The failure of either party to insist on one or more instances upon the full and complete performance of any of the terms or conditions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, will not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time will not be construed as an accord and satisfaction.

17.0 CANCELLATION FOR CONFLICT OF INTEREST

- 17.1 This Agreement is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.
- 17.2 Subrecipient agrees to comply with all applicable conflict of interest provisions contained in Federal laws and regulations that govern the awarding agency including 24 CFR §§ 84.42 and 570.611.

18.0 TERMINATION AND SUSPENSION

- 18.1 Without Cause: County may terminate this Agreement at any time, without cause, by serving a written notice upon Subrecipient at least thirty (30) days before the effective date of the termination. In the event of such termination, the County's only obligation to Subrecipient will be payment for services rendered prior to the date of termination.
- 18.2 With Cause: Except as set forth in paragraph 4.4, County may terminate this Agreement at any time without advance notice and without further obligation to County finds Subrecipient to be in default of any provision of this Agreement.
- 18.3 Insufficient Funds: Notwithstanding paragraphs 18.1 and 18.2 above, if any state or federal grant monies used to pay for performance under this Agreement are reduced or withdrawn, County will have the right to either reduce the services to be provided and the total dollar amount payable under this Agreement or terminate the Agreement. To the extent possible, County will endeavor to provide fifteen (15) days written notice of such reduction or termination. In the event of a reduction in the amount payable, County will not be liable to Subrecipient for more than the reduced amount. In the event of a termination under this paragraph, County's only obligation to Subrecipient will be payment for services rendered prior to the date of termination to the extent that grant funds are available.
- 18.4 Non-Appropriation: Notwithstanding any other provision in this Agreement, County may terminate this Agreement if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Agreement. In the event of such termination, County will have no further obligation to Subrecipient, other than for services rendered prior to termination.
- 18.5 Suspension: County reserves the right to suspend Subrecipient's performance and payments under this Agreement immediately upon notice delivered to Subrecipient's designated agent in order to investigate Subrecipient's activities and compliance with this Agreement. In the event of an investigation by County, Subrecipient will cooperate fully and provide all requested information and documentation. At the conclusion of the investigation, or within forty-five (45) days, whichever is sooner, Subrecipient will be notified in writing that the Agreement will be immediately terminated or that performance may be resumed.

19.0 NOTICE

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

County:

Daniel Tylutki, Interim Director
Pima County Community Development &
Neighborhood Conservation
2797 E. Ajo Way
Tucson, AZ 85713

Subrecipient:

Wendell Hicks, Executive Director
Southern Arizona AIDS Foundation
375 South Euclid Avenue
Tucson, Arizona 85719

20.0 OTHER DOCUMENTS

- 20.1 In entering into this Agreement, Subrecipient and County have relied upon information provided in Subrecipient's proposal submitted in response the 2018-2019 Community Planning Application including the Instructions to Bidders, Standard Terms and Conditions, Specific Terms and Conditions, Solicitation Addenda, Subrecipient's Proposal, other information and documents submitted by the Subrecipient in its' response to said Solicitation.
- 20.2 The documents set forth in paragraph 20.1 are hereby incorporated into and made a part of this Agreement as if set forth in full herein, to the extent not inconsistent with the provisions of this Agreement, including all exhibits. Subrecipient will promptly bring any provisions which Subrecipient believes are inconsistent to County's attention, and County will provide Subrecipient with its interpretation of the provisions in question. In the event of an irreconcilable inconsistency, the provisions of the awarding agency documents will govern over the conditions of this Agreement, unless otherwise required by law.

21.0 BOOKS AND RECORDS

- 21.1 Subrecipient will keep and maintain all records specified in 24 CFR 570.506 which are pertinent to the activities funded under this Agreement. All such records will be open for inspection and audit by duly authorized representatives of County during normal business hours. Records include, but are not limited to:
- 21.1.1 A full description of each action or activity taken to comply with this Agreement;
 - 21.1.2 Demonstration that the actions and activities meet one or more of the National Objectives of the CDBG program;
 - 21.1.3 Eligibility documentation and determination;
 - 21.1.4 Documentation of compliance with the fair housing and equal opportunity components of the CDBG program;
 - 21.1.5 Disbursements of funds;
 - 21.1.6 Financial records required under 24 CFR § 570.502 and 24 CFR §§ 84.21 – 28; and
 - 21.1.7 Documentation of compliance with Subpart K of 24 CFR Part 570.
- 21.2 Subrecipient must retain all records pertaining to this Agreement for four (4) years after County submits the annual performance and evaluation report to HUD in which the CDBG-funded activities under this Agreement are reported on for the final time or until completion of any action and resolution of all issues which arise from any related litigation, claim, negotiations, audit or other action involving the records that was started before the expiration of the 4-year period, whichever is later.

22.0 AUDIT REQUIREMENTS

- 22.1 Subrecipient will:
- 22.1.1 Comply with the applicable provisions of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Parts 200 and 2400).

- 22.1.2 **Establish and maintain a separate, identifiable accounting of all funds provided by County under this Agreement.** The accounting must record all expenditures which are used to support invoices and requests for payment from the County.
- 22.1.3 Establish and maintain accounting records which identify the source and application of any funds not provided under this Agreement used to support these Agreement activities.
- 22.1.4 Ensure that all accounting records meet the requirements of the Federal, State, County, and generally accepted accounting principles laws and regulations.
- 22.1.5 Upon written notice from County, provide a program-specific or financial audit. Such notice from County will specify the period to be covered by the audit, the type of audit and the deadline for completion and submission of the audit.
- 22.1.6 Assure that any audit conducted pursuant to this Agreement is performed by a qualified, independent accounting firm and submitted to County within six (6) months of completion of the audit required pursuant to this Section 22.0, unless a different time is specified by County. The audit submitted must include Subrecipient responses, if any, concerning any audit findings.
- 22.1.7 Pay all costs for any audit required or requested pursuant to this Section 22.0, unless the cost is allowable for payment with the grant funds provided pursuant to this Agreement under the appropriate federal or state grant law and the cost was specifically included in the Subrecipient grant budget approved by County.

22.2 Subrecipient status:

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

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

Dewey Cooper, Contract Specialist
Pima County Community Development and Neighborhood Conservation
2797 E. Ajo Way, 3rd Floor
Tucson, AZ 85713

23.0 COPYRIGHT

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

24.0 PROPERTY OF THE COUNTY

- 24.1 Subrecipient is not the agent of County for any purpose and will not purchase any materials, equipment or supplies on the credit of County.
- 24.2 Any materials, including reports, computer programs and other deliverables, created under this Agreement are the sole property of County. Subrecipient is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. Subrecipient will not use or release these materials without the prior written consent of County.

25.0 DISPOSAL OF PROPERTY

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

26.0 COORDINATION

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

27.0 PUBLIC RECORDS

27.1 Disclosure. Pursuant to Arizona Public Records law, A.R.S. § 39-121 *et seq.*, and A.R.S. § 34-603(H) in the case of construction or architectural and engineering services procured under A.R.S. § Title 34, Chapter 6, all documents submitted in response to the solicitation resulting in an award of this Agreement, including, but not limited to pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.

27.2 Records Marked Confidential; Notice and Protective Order.

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

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

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

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

28.0 ELIGIBILITY FOR PUBLIC BENEFITS

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

29.0 LEGAL ARIZONA WORKERS ACT COMPLIANCE

29.1 Compliance with Immigration Laws. Subrecipient hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to Subrecipient's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Subrecipient will further ensure that each subcontractor who performs any work for Subrecipient under this Agreement likewise complies with the State and Federal Immigration Laws.

29.2 Books and Records. County has the right at any time to inspect the books and records of Subrecipient and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

29.3 Remedies for Breach of Warranty. Any breach of Subrecipient's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this Section 29.0, is a material breach of this Agreement subjecting Subrecipient to penalties up to and including

suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Subrecipient will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Subrecipient.

- 29.4 Subcontractors. Subrecipient will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section 29.0 by including a provision in each subcontract substantially in the following form:

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

30.0 NO JOINT VENTURE

It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between County and any Court employees, or between Court and any County employees. Neither party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

31.0 REMEDIES

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

32.0 SEVERABILITY

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

33.0 NON-EXCLUSIVE AGREEMENT

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

34.0 NO THIRD PARTY BENEFICIARIES

Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

35.0 ENTIRE AGREEMENT

- 35.1 This document constitutes the entire agreement between the parties pertaining to the subject it addresses and supersedes all prior or contemporaneous agreements and understandings, oral or written.
- 35.2 No verbal agreements or conversations with any officer, agent or employee of County prior to or after the execution of this Contract will affect or modify any of the terms or obligations contained in any documents comprising this Contract. Any such verbal agreements are unofficial information and in no way binding upon County.

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

PIMA COUNTY

Chairman, Board of Supervisors

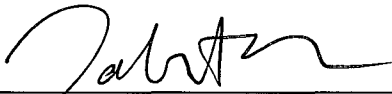
Date: _____

ATTEST

Clerk of the Board

Date: _____

SUBRECIPIENT

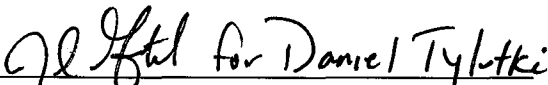


Signature

Tabitha Fox, Director of Finance
Printed name and title

Date: 7/2/19

APPROVED AS TO CONTENT:



Director, Community Development
and Neighborhood Conservation

APPROVED AS TO FORM:



Karen S. Friar, Deputy County Attorney

EXHIBIT A
SCOPE OF WORK

1. Program Title and Location:

Affordable Housing Expansion & Rehabilitation for People Living with HIV/AIDS (“the Project”).

Location confidential by law to protect client confidentiality.

2. Program Purpose:

Subrecipient will use CDBG funds to complete roofing, and security public facility improvements at one (1) apartment complex, totaling twenty (20) housing units, utilized to provide permanent supportive housing to households living with HIV/AIDS.

3. Program Activities:

3.1. Procure and engage licensed architects, engineering services, and contractors as follows:

3.1.1. Subject to approval of plans and specifications pursuant to paragraph 3.2 below, competitively bid the work and select the lowest qualified bidder meeting specifications for each required trade; and

3.1.2. Obtain Pima County Community Development & Neighborhood Conservation Department (“CDNC”) approval of all procurement documents in the bid packet before bids are solicited.

3.2. Submit design plans and product specifications for the improvements set forth in this Section 3 to Pima County for review and approval.

3.3. Obtain all required state and local permits for the Project.

3.4. Complete Facility Improvements as follows:

3.4.1. Remove all existing rooftop equipment and utilities to facilitate the installation of new roofing material;

3.4.2. Remove existing roofing material, including sheathing, if necessary;

3.4.3. Install new built-up roof including, but not limited to:

3.4.3.1. Two (2) layers of Built Up Roofing (BUR) system, Type IV Glass Ply Sheet Asphalt Saturated Fiberglass Mat, or equivalent;

3.4.3.2. “3-course seal” and emulsion products, or equivalent; and

3.4.3.3. Elastomeric roof coating.

3.4.4. Re-install all removed equipment and utilities.

3.4.5. Install exterior security lighting in the most appropriate locations to provide wide exterior coverage.

3.4.6. Subrecipient may substitute any of the materials listed in paragraph 3.4 above with equivalent types of materials upon approval of County.

3.5. Schedule, oversee, manage and inspect the Project throughout all phases of construction.

3.6. In consideration for CDBG funds, Subrecipient will ensure that the upgraded permanent supportive affordable housing units at the apartment complex is available to households living with HIV/AIDS.

- 3.7. Retain copies of all executed contracts for scope of work, change orders, on-site inspections and sign-off on all work and final inspections.
- 3.8. Retain title to and operate the facility as affordable housing for people with HIV/AIDS for a period of five (5) years following the completion of the Project. This provision will survive the termination of this Agreement. The following conditions apply to secure such performance:
 - 3.8.1. In the event Subrecipient fails to adhere to this provision, Subrecipient will reimburse County for the total amount of CDBG funds expended for the Project.
 - 3.8.2. Subrecipient will execute a Deed of Trust in the form set forth in Exhibit C in the amount of **\$141,647.00** to secure such performance. The executed Deed of Trust is incorporated into and made a part of this Agreement as if set forth in full herein.

4. Project goal/predicted outcomes:

- 4.1. Goal: Create suitable, safe and healthy living environments for households living with HIV/AIDS.
- 4.2. Predicted outcome: Permanent supportive affordable housing units will be more energy efficient, safe, healthy and less expensive to operate.

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

Upon completion, the Project will meet HUD CDBG National Objective to serve low- to moderate-income persons with public facility improvements.

6. Metrics available to measure performance:

At a minimum **20 households** affected by HIV/AIDS will have improved access to permanent, supportive, and affordable housing.

7. Reports:

- 7.1. Subrecipient will use County's on-line application system to provide the following for submission to HUD. The reports must be made quarterly and include, but are not limited to, the following:
 - 7.1.1. Household income calculated and identified by appropriate cohort per household as follows:
 - 7.1.1.1. Extremely Low Income, at or below 30% Area Median Income ("AMI");
 - 7.1.1.2. Low Income, at or below 50% AMI; and
 - 7.1.1.3. Moderate Income, at or below 80% AMI.
 - 7.1.2. Racial and Ethnic information of youth receiving programming assistance.
 - 7.1.3. Number of female-headed households assisted.
 - 7.1.4. Number of disabled clients assisted.
 - 7.1.5. Project status and accomplishment narrative describing, at a minimum, the following:
 - 7.1.5.1. Progress toward completing the project;
 - 7.1.5.2. Explanation of any delays; and
 - 7.1.5.3. Client or participant success stories.
- 7.2. All reporting provisions will survive the termination of this Agreement.

8. **Budget:**

CDBG Funded Activity	Budget
Architecture/Engineering	\$2,274.00
Roof Replacement	\$137,873.00
Exterior Security Lighting	\$1,500.00
Total	\$141,647.00

END OF EXHIBIT A

EXHIBIT C

When recorded, return to:

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

PERFORMANCE DEED OF TRUST

DATE: JULY 2, 2019

TRUSTOR: Southern Arizona AIDS Foundation, a non-profit corporation registered to do business in the State of Arizona, whose mailing address is:

375 S. Euclid Avenue
Tucson, Arizona 85719-6644

TRUSTEE: Lawyers Title of Arizona, Inc., whose mailing address is: 450 W. Redondo, Tucson, AZ 85701

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

Pima County Community Development & Neighborhood Conservation
Attention Pima County CDBG Program
2797 E. Ajo Way, 3rd Floor
Tucson, Arizona 85713

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

110 W. RILLITO STREET
TUCSON, AZ 85705



- 1. Parties.** This Deed of Trust is entered into by and among the Trustor, Trustee and Beneficiary.
- 2. Grant of Property.** Trustor hereby irrevocably grants, conveys, transfers and assigns to the Trustee in Trust, with Power of Sale, the Property, together with leases, issues, profits, or income therefrom (all of which are "*Property Income*"), subject to:

- 2.1. the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income, and
- 2.2. current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record.
3. **Security.** The grant pursuant to paragraph 2 above is for the purpose of securing all of the following:
 - 3.1. Performance of the terms of the Pima County CDBG Program funding contract, Pima County Contract No. CT-CD 19-525, between Beneficiary and Trustor (the "**Grant Agreement**");
 - 3.2. CDBG funds in the amount of \$141,647.00 (the "**County Contribution**"), provided that the parties hereto acknowledge and agree Trustor has no obligation to repay the **County Contribution** to Beneficiary, except as provided in the **Grant Agreement** and this Performance Deed of Trust; and
 - 3.3. Trustor's obligation pursuant to Exhibit A – Scope of Work, paragraph 3.8 of the **Grant Agreement** to retain title to and operate the property as a facility to provide housing for persons living with HIV/AIDS for a period of five (5) years following the completion of the facility improvements set forth in the **Grant Agreement**.
4. **Obligations of Trustor to Protect Security.** To protect the security of this Performance Deed of Trust, Trustor agrees:
 - 4.1. to keep the Property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any action upon the Property in violation of law; and to do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general;
 - 4.2. to provide, maintain, and deliver to Beneficiary fire and other property insurance satisfactory to and with loss payable to Beneficiary. Beneficiary may apply any amounts collected under any fire or other insurance policy to any indebtedness secured hereby and in such order as Beneficiary may determine, or at the sole option of Beneficiary all or any portion of the amount so collected may be released to Trustor. Such application or release does not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice;
 - 4.3. to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses of Beneficiary and Trustee, including cost of evidence of title and attorney's fees and costs in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary or Trustee to foreclose this Deed of Trust;
 - 4.4. to pay, before delinquent, all taxes and assessments affecting the Property, all encumbrances, charges, and liens, with interest, on the Property or any part thereof, which appear to be prior or superior hereto; all costs, fees, and expenses of this Trust, including, without limiting the generality of the foregoing, the fees of Trustee for issuance of any Deed of Partial Release and Partial Reconveyance or Deed of Release and Full Reconveyance, and all lawful charges, costs, and expenses in the event of reinstatement of, following default in, this Deed of Trust or the obligations secured hereby.
 - 4.5. that as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority, during the continuance of this Trust, to collect the Property Income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such Property Income as it becomes due and payable. Upon any such default, Beneficiary may at any time, without notice, either in person, by agent, or by a receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured,

enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect such Property Income, including that past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees and costs, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such Property Income, and the application thereof as aforesaid, does not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.

5. Right of Beneficiary or Trustee to Protect Security.

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

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

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

7. Right to Sell Property.

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

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

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

TRUSTOR:

Southern Arizona AIDS Foundation, an Arizona non-profit corporation

By: [Signature]

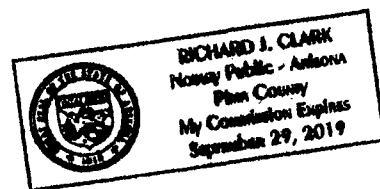
Title: Director of Finance

State of Arizona)
) ss.
County of Pima)

This instrument was acknowledged before me this 2ND day of JULY, 2019, by, TABITHA FOX DIRECTOR as OF FINANCE of Southern Arizona AIDS Foundation, an Arizona non-profit corporation.

[Signature] Notary Public

My commission will expire: 9/29/2019



ACCEPTED AND APPROVED BY:

[Signature]
Director, Pima County Community Development &
Neighborhood Conservation Department