



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 03/02/2021- Addendum

* = Mandatory, information must be provided

or Procurement Director Award ☐

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

YWCA of Southern Arizona

***Project Title/Description:**

House of Neighborly Services Facility Improvement

This contract can be found in OnBase by searching Contracts CT-CR-21-283 in DOC_ID_AMS.

***Purpose:**

The Project will complete necessary roof and facility improvements to make the facility available as a community meeting space for agency programming and community use in the City of South Tucson Community Development Target area.

Attachment: Contract Number CT-CR-21-283

***Procurement Method:**

This Subrecipient Agreement is a non-Procurement contract and not subject to Procurement rules.

***Program Goals/Predicted Outcomes:**

Goal: The Project will provide a suitable community environment through improved and increased quality and access to neighborhood public facilities.

Predicted outcome: Residents in the City of South Tucson and surrounding areas will have increased accessibility to the Facility to conduct community meetings, special events and other programs promoting and supporting individual sustainability in the City of South Tucson.

***Public Benefit:**

The facility improvements will meet the HUD CDBG National Objective to provide area benefit to residents of the City of South Tucson Community Development Target area by completing needed public facility improvements.

***Metrics Available to Measure Performance:**

5,650 area residents will have increased access to the facility for community events and programs.

***Retroactive:**

Yes, to March 1, 2021. Finalizing documentation delayed the contract completion. If this contract is not approved the facility improvements will not take place.

TO: COB 2-25-21 ①
vers: 1
pgs: 24

Procure Dept 02/25/21 PM03:08

Document Type: CT Department Code: CR Contract Number (i.e.,15-123): 21-283

Commencement Date: 03/01/2021 Termination Date: 02/28/2022 Prior Contract Number (Synergen/CMS): _____

☒ **Expense Amount: \$*** 55,184.00 ☐ Revenue Amount: \$ _____

***Funding Source(s) required:** U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG)

Funding from General Fund? ☐ Yes ☒ No If Yes \$ _____ % _____

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

If Yes, is the Contract to a vendor or subrecipient? Subrecipient

Were insurance or indemnity clauses modified? ☐ Yes ☒ No

If Yes, attach Risk's approval.

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

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

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

Amendment No.: _____ AMS Version No.: _____

Commencement Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

☐ Expense 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): _____

Commencement Date: _____ Termination Date: _____ Amendment Number: _____

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

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

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

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

***Funding Source:** _____

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

Contact: Joel Gastelum, 724-6750

Department: CWD Telephone: 724-6750

Department Director Signature/Date: *Sam P. Jones* 2/19/21

Deputy County Administrator Signature/Date: *C. D. Kelly* 2/25/21

County Administrator Signature/Date: _____
(Required for Board Agenda/Addendum Items)

Pima County Department of Community and Workforce Development

Project: YWCA of Southern Arizona; *House of Neighborly Services, Facility Improvements*
HUD CDBG Public Service Activity (LMA)

Contractor: YWCA of Southern Arizona
525 North Bonita Avenue
Tucson, Arizona 85745

Amount: \$55,184.00

Contract No.: CT-CR-21-283

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

Contract Term: March 1, 2021 through February 28, 2022

DUNS No.: 184594661

Research or Development: ☐ Yes ☒ No

Federal Contract No.: 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)	FY16 \$3,014,354,773.97	FY16 \$2,613,490.00

SUBAWARD AGREEMENT**1.0 Parties, Background, and Purpose**

- 1.1 Parties. This Subaward Agreement ("Agreement") is between Pima County, ("County"), a body politic and corporate of the State of Arizona and YWCA of Southern Arizona, ("Subrecipient"), a non-profit corporation doing business in the State of Arizona.
- 1.2 Authority. 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. County applied for and received Community Development Block Grant ("CDBG") funds in the amount of \$2,613,490 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. Under solicitation number CDNC-10-30-15-CDBG-ESG ("2016-2017 Community Planning Application"), County sought proposals for programs and activities that would qualify for CDBG funding during Federal Fiscal Year ("FY") 2016-2017. Subrecipient submitted response to the 2016-2017 Community Planning Application. 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. On May 3, 2016 the Pima County Board of Supervisors (the "Board") 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. The Board also passed Resolution No. 2016-31 approving the allocation of FY 2016-2017 CDBG funds to Subrecipient.
- 1.5 Upon completion of architect and design services, it was recommended that roofing improvements and upgrades to the electrical system were necessary .
- 1.6 The roofing improvements and electrical upgrades must be completed prior to the installation of a commercial kitchen.

2.0 Term, Extensions, and Amendments

- 2.1 Term and Extensions. This Agreement commences on March 1, 2021 and terminates on February 28, 2022 (the "Initial Term"). If the commencement date of the Initial Term is before the signature date of the last party to execute this Contract, the parties will, for all purposes, deem the Contract to have been in effect as of the commencement date. "Term," means the original term plus any exercised Extension Options. County may renew this Agreement for up to a total of five years to coincide with the term of 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.
- 2.2 Amendments. The provisions of 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 County before any services under the amendment commences. Minor modifications may be made by written memorandum approved and signed by the Director of the Pima County Department of Community & Workforce Development ("CWD") 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 County under this Agreement.
- 2.3 Survival. Notwithstanding paragraph 2.1, 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.

Subrecipient shall provide County with the services described in Exhibit A. Subrecipient shall also obtain and maintain all required licenses, permits, and authority required for performance under this Agreement. Subrecipient shall employ suitably trained and skilled personnel to perform all services under this Agreement. Unless otherwise provided for herein, the personnel delivering services pursuant to this Agreement will: 1) be employees or volunteers of the Subrecipient; 2) satisfy any qualifications in this Agreement; and 3) be covered by personnel policies and practices of Subrecipient. 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. Subrecipient shall maintain an accounting manual that describes its financial procedures in sufficient detail to ensure that its financial practices are easily understood.

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 shall cooperate in the monitoring and evaluation process by County and/or HUD. Subrecipient shall 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. 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 15 calendar days from date of notice, this Agreement may be suspended or terminated. 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 County shall pay Subrecipient up to \$55,184 ("Maximum Allocated Amount"). County will make payments from CDBG Grant(s) County has been awarded from HUD ("awarding agency"). 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. Pursuant to the agreement between HUD and County (Pima County Contract No. B-16-UC-04-0502) and the Pima County Board of Supervisors' approval of this allocation of CDBG funds to Subrecipient on May 3, 2016, Subrecipient may be reimbursed for eligible costs associated with activities under this Agreement from and after March 1, 2021.
- 5.2 Subrecipient shall 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

- 5.3 Each monthly request for reimbursement must be for services and costs as identified in Exhibit A and reference this Agreement number. The person(s) that prepared the request and an authorized manager, supervisor or executive of the Subrecipient must approve and sign each request to insure proper internal financial controls. In each request, Subrecipient shall include the amount of CDBG accrued expenditures, if any; program income, as defined by the awarding agency; and all other fiscal resources applied to expenses incurred in providing services under this Agreement.
- 5.4 Each request must be accompanied by documentation that includes, but is not limited to:
 - 5.4.1 A summary report of monthly expenditures by expense categories as shown in approved budget in Exhibit A of this Agreement.

5.4.3 If reimbursement is authorized for travel, detailed travel reports to support all travel expenses.

5.4.4 Any other documentation requested by County.

- 5.5 Subrecipient shall include with each request an electronic copy with certified electronic signatures, of the Financial Status Report and Request for Funds. Hard copies, with original signatures, of the Financial Status Report and Request for Funds must be retained by Subrecipient in compliance with this Agreement, Section 21.0, Books and Records County will provide Subrecipient with a form similar to that attached hereto as Exhibit B upon execution of this Agreement.
- 5.6 If reimbursement is authorized for personnel costs, the monthly request for reimbursement must include: 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 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 paragraphs 5.3 through 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 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 30 days from the date invoice is received. Subrecipient should budget cash needs accordingly. County may, at its sole discretion 1) determine the acceptability and progress of work performed and determine the resulting entitlement to payment of each request for reimbursement; liquidate funds available under this Agreement for costs incurred by County on behalf of Subrecipient, and 3) deny full payment for requests for reimbursement that are submitted to County after the dates in paragraph 5.2. County may deduct its processing costs or delay-related damages in connection with a request for payment submitted after that date. Additionally, County may 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.

- 5.10 Subrecipient must submit its request for final payment for compensation earned and/or eligible costs incurred to County within 15 working days after the end of the Agreement term. The request must meet the requirements in paragraphs 5.3 through 5.6 and include a report summarizing Subrecipient's performance during the term of the Agreement. Pursuant to A.R.S. § 11-622, County will deny reimbursement completely for requests for payment submitted later than six months after the last item of the account accrues.
- 5.11 No payments will be made to Subrecipient, until: 1) Subrecipient has completed and submitted a W-9 Taxpayer Identification Number form; 2) Subrecipient has registered as a Pima County Vendor at

the following web address -- <https://secure.pima.gov/procurement/vramp/login.aspx>); 3) this Agreement is fully executed; and 4) adequate and accurate documentation is provided with each request for payment or invoice.

- 5.12 The Director of CWD or designee has the sole discretion to grant changes between budget line items of no more than 15%. The change may not increase or decrease the maximum allocated amount. 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 the reason the change is necessary; and how the specified purpose, program(s), metrics, or outcomes in this Agreement will continue to be met, despite the requested change. 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. If the Director of CWD or designee approves the request for the budget line item change, the change will not be effective, nor will compensation under the change be provided, until the date in the written approval.
- 5.13 Pursuant to 2 CFR § 2400.101, unless excepted under 24 CFR chapters I through IX, the cost principles in 2 CFR Part 200, Subpart E, will be used to determine whether an incurred cost will be reimbursed under this Agreement. Subrecipient must reimburse County for improper, unallowable or unsubstantiated costs discovered as a result of audit or otherwise within 30 days following demand for reimbursement by County.
- 5.14 For the period of record retention required under Section 21.0, County may question any payment made under this Section 5.0 and require reimbursement by setoff or otherwise for payments determined to be improper or contrary to the Agreement or law.

6.0 Program Income

County does not anticipate that program income, as defined by the awarding agency, will be generated under the activities of this Agreement. In the event that activities under this Agreement do generate program income or program income is authorized, Subrecipient shall 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. Subrecipient shall also 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 (“Required Insurance”) satisfying the below requirements (“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. 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 County with A.M. Best rating of not less than A- VII, unless otherwise approved by 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 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 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 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 30 days advance written notice to County of the policy cancellation, suspension or material change. Subrecipient must provide written notice to County within two business days of receipt of notice. For cancellation of non-payment, Insurer is to provide County with written notice ten days prior to cancellation of policy.
- 7.5 **Insurance 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 County's failure to obtain a required insurance certificate or endorsement, County's failure to object to a non-complying insurance certificate or endorsement, or 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, Subrecipient will defend, indemnify and hold harmless Pima County, and any related taxing district, and the officials and employees and each of them (collectively, "Indemnitee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees)(collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Subrecipient or any of Subrecipient'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 Subrecipient to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by Subrecipient from and against any and all claims. Subrecipient 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.
- 8.3 Subrecipient has the same obligations to County as County does to HUD pursuant to the 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.

9.0 Compliance with Laws

- 9.1 Subrecipient will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement.
- 9.2 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.

- 9.3 Subrecipient will comply with the requirements of 24 CFR Part 570, including Subpart K of these regulations, except the Subrecipient does not assume: 1) County's environmental responsibilities described in 24 CFR § 570.604; and 2) County's responsibility for initiating the review process under the provisions of 24 CFR Part 52.
- 9.4 Subrecipient warrants that CDBG funds provided or personnel employed in the administration of the program funded under this Agreement will not be used for political activities; inherently religious activities; 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"); political patronage; or nepotism activities.
- 9.5 Subrecipient will comply with the applicable provisions of:
- 9.5.1 Davis-Bacon Act (Public Law 107-217);
 - 9.5.2 Contract Work Hours and Safety Standards Act (40 USC 327 *et seq.*);
 - 9.5.3 Copeland Anti-Kick Back Act (18 USC 874 *et seq.*);
 - 9.5.4 Section 3 of the HUD Act of 1968; and
 - 9.5.5 All rules and regulations applicable to the listed statutes.
- 9.6 Subrecipient will fully cooperate with County, HUD and any other federal agency in the review and determination of compliance with the listed provisions.
- 9.7 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.

10.0 Independent Contractor

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. 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. Subrecipient will be solely responsible for its program development, operation, and performance.

11.0 Subcontractors

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 except prior written approval is not required for the purchase of supplies that are necessary and incidental to Subrecipient's performance under this Agreement. Subrecipient must follow all applicable Federal, State, and County rules and regulations for obtaining subcontractor services. 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. Subrecipient must include the provision in paragraph 4.2 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

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. 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. Unless exempt under federal law, Subrecipient will comply with Titles VI and VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act; Section 504 of the Rehabilitation Act of 1973; and the Fair Labor Standards Act of 1938.

14.0 Americans with Disabilities Act

Subrecipient will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 USC §§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35). 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

This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511. 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 §§ 84.1 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 30 days before the effective date of the termination. In the event of such termination, County's only obligation to Subrecipient will be payment for services rendered prior to the date of termination.
- 18.2 With Cause: Except for a default under paragraph 4.2, 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, 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 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 45 days, whichever is sooner, County will notify Subrecipient in writing that the Agreement will be immediately terminated or that performance may be resumed.

19.0 Notice

Subrecipient must give written notice of any change of corporate or entity status as promptly as possible and, in any event, within 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. 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, Deputy Director
Pima County Department of
Community & Workforce Development
2797 East Ajo Way
Tucson, Arizona 85713

Subrecipient:

Magdalena Verdugo, CEO
YWCA of Southern Arizona
525 North Bonita Avenue
Tucson, Arizona 85745

20.0 Other Documents

In entering into this Agreement, Subrecipient and County have relied upon information provided in Subrecipient's proposal submitted in response to the 2016-2017 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. These documents are incorporated into this Agreement 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 200; 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 three 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 3-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 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 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 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 in A.R.S. § 11-624, "Audit of Non-Profit Corporations Receiving County Monies." If Subrecipient meets or exceeds the single audit threshold in 2 CFR 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 90 days following the end of Subrecipient's fiscal year. Subrecipient must timely submit the required or requested audit(s) to:

Rise Hart
Pima County Department of Community & Workforce Development
2797 East Ajo Way, 3rd Floor
Tucson, Arizona 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 County. Upon approval, 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 County

Subrecipient is not the agent of County for any purpose and will not purchase any materials, equipment or supplies on the credit of County. 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. If Subrecipient reasonably believes that some of the records listed in paragraph 27.1 contain proprietary, trade-secret or otherwise-confidential information, Subrecipient must prominently mark those records "CONFIDENTIAL". 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. County will release the records ten business days after the date of notice, unless Subrecipient has, within that period, secured an appropriate order from a court of competent jurisdiction in Arizona,

enjoining the release of the records. 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 ensure 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 Israel Boycott Certification

Pursuant to A.R.S. § 35-393.01, if Subrecipient engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of \$100,000 or more, Subrecipient certifies it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

36.0 Entire Agreement

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. No verbal agreements or conversations with any officer, agent or employee of County prior to or after the execution of this Agreement will affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreements are unofficial information and in no way binding upon County.

SIGNATURE PAGE TO FOLLOW


The parties have affixed their signatures to this Agreement on the date written below.

PIMA COUNTY

Chair, Board of Supervisors


DATE: _____

APPROVED AS TO CONTENT:




Daniel Tylutki, Deputy Director
Department of Community & Workforce
Development

APPROVED AS TO FORM:



Stacey Roseberry, Deputy County Attorney

SUBRECIPIENT



Authorized Signature

Magdalena Verdugo, CEO
Printed Name and Title

DATE: 2/11/2021

CHAIRMAN BOARD OF SUPERVISORS

ATTEST:

**Clerk, Board of Supervisors
Pima County, Arizona**

EXHIBIT A
SCOPE OF WORK

1. Project Title and Locations:

YWCA of Southern Arizona: House of Neighborly Services, Facility Improvements (“the Project”).

Project Location:

House of Neighborly Service (“the Facility”)
243 West 33rd Street
South Tucson, Arizona 85713

2. Project Purpose:

Complete necessary roof and facility improvements to make the facility available as a community meeting space for agency programming and community use in the City of South Tucson Community Development Target area.

3. Project Activities. In order to meet project purpose and goals, improvements must be made to the facility. These improvements include repairs to the roof, replacement of the Heating, Ventilation and Cooling (HVAC) system, and kitchen and restroom upgrades. Subrecipient shall comply with the 2016-2017 Annual Action Plan as follows:

3.1. Subrecipient shall procure and engage licensed contractors as follows:

- 3.1.1. Competitively bid, selecting the lowest qualified bidder that meets the specifications for each trade required.
- 3.1.2. Procurement activities must comply with the Pima County Procurement Code and Federal Labor Standards., including Davis Bacon wage rates and reporting requirements, and any other HUD or other federal regulations, such as Equal Employment Opportunity and Section 3.
- 3.1.3. All procurement documents in the bid packet must be approved by Pima County CWD before bids are solicited.

3.2. Subrecipient shall complete facility improvements per the plans and specifications submitted to the County including, but not limited to:

- 3.2.1. Roof repair to include recoat and penetration sealing;
- 3.2.2. Electrical service repairs and upgrades, as needed;
- 3.2.3. Removal of two existing roof HVAC units and installation of new HVAC units and associated ducting, as required, to ensure adequate capacity for the facility; and,
- 3.2.4. Procure and install commercial refrigerator and freezer.

3.3. Subrecipient shall remodel two existing restrooms into one ADA accessible restroom.

3.4. Subrecipient may acquire other eligible trade work if approved by Pima County.

3.5. Subrecipient shall retain title to and operate the facility to serve low-to moderate-income residents in the City of South Tucson Community Development Target area for a period of five years following the completion of the Project. This provision will survive the termination of this Agreement. The following conditions apply to secure such performance:

- 3.5.1. 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.

3.5.2. Subrecipient shall execute a Deed of Trust contained in Exhibit C in the amount of \$55,184.00 to secure such performance.

3.6. Subrecipient shall make the Facility available to area non-profits and community groups for public meetings, workshops, trainings or other events for the benefit of the community.

4. COVID-19 Restrictions. Subrecipient shall provide all in-person and group program services in compliance with Centers for Disease Control and Prevention (“CDC”), State, and County guidelines for operating during the Coronavirus COVID-19 pandemic. If Subrecipient’s performance of the services must be modified or curtailed to comply with public health restrictions related to COVID-19, Subrecipient must immediately report the situation to County. County and Subrecipient will confer at least monthly to determine appropriate performance requirements and activities until services can be resumed in full.

5. Project goal/predicted outcomes:

5.1. Goal: The Project will provide a suitable community environment through improved and increased quality and access to neighborhood public facilities.

5.2. Predicted outcome: Residents in the City of South Tucson and surrounding areas will have increased accessibility to the Facility to conduct community meetings, special events and other programs promoting and supporting individual sustainability in the City of South Tucson.

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

The facility improvements will meet the HUD CDBG National Objective to provide area benefit to residents of the City of South Tucson Community Development Target area by completing needed public facility improvements.

7. Metrics available to measure performance.

5,650 area residents will have increased access to the facility for community events and programs.

8. Reports. Subrecipient shall submit quarterly reports that capture the following Community Public Facilities/Infrastructure, low-to-moderate income area information (“LMA”). Subrecipient’s reports shall include: 1) Program/project status and accomplishment narrative; and 2) Number of unduplicated persons and/or households assisted. County may require reports for five (5) full years after the Project has been completed. Subrecipient shall submit reports through County’s online reporting system. Subrecipient shall submit the quarterly reports on January 15, 2021; April 15, 2021; July 15, 2021; and October 15, 2021. All reporting provisions survive the termination of this Agreement.

9. Budget:

CDBG Funded Activities	Budget
Roofing Improvements	\$3,000.00
Electrical Improvements	\$3,000.00
HVAC Improvements	\$9,000.00
Commercial freezer & refrigerator	\$10,000.00
ADA Restroom Improvements	\$26,184.00
Total	\$55,184.00

EXHIBIT C

When recorded, return to:

Pima County Department of Community & Workforce Development
2797 East Ajo Way, 3rd Floor
Tucson, Arizona 85713

PERFORMANCE DEED OF TRUST

DATE: _____, 2021

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

525 N. Bonita
TUCSON, AZ 85745

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 Department of Community & Workforce Development
Attention Pima County CDBG Program
2797 East Ajo Way, 3rd Floor
Tucson, Arizona 85713

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

HOME LOT 6 BLK 28 and HOME LOT 7 BLK 28
Pima County Tax Parcel Nos. 118-24-1300 and 118-24-1310
Together with all buildings, improvements and fixtures thereon or hereafter erected thereon.
Street addresses, if any, or identifiable location of the property:
243 West 33rd Street
South Tucson, Arizona 85713

1. **Parties.** This Deed of Trust entered into by 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 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 1 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-CR-21-283, between Beneficiary and Trustor (the "Subaward Agreement");
- 3.2. CDBG funds in the amount of \$55,184.00 (the "County Contribution"), provided that the parties 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 3.5 of the Subaward Agreement to retain title to and operate the property as a facility to provide services for low-to-moderate income persons for a period of five years following the completion of the facility improvements in the Subaward 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 Subaward 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 Subaward 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 Subaward 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 be mailed to each Trustor at its address set forth above.
- 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 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.

SIGNATURE PAGE TO FOLLOW

YWCA of Southern Arizona, an Arizona non-profit corporation

Title: CEO

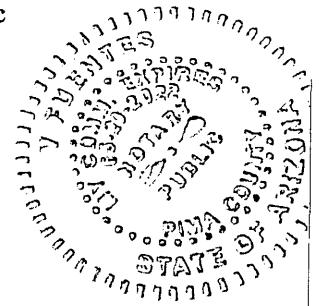
) SS.

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as CEO

____Notary Public

5-20-22



Deputy Director, Pima County Department of Community &
Workforce Development