



Contract Number: CT-CD. 12 * 343-02
Effective Date: 8-1-13
Term Date: 2-28-14
Cost: ☒
Revenue: ☒
Total: ☐ NTE: _____
Action: _____
Renewal By: 12-1-13
Term: 2-28-14
Reviewed by: [Signature]

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: January 7, 2014

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

Authorization of contract CT-CD 12000000000000000343 between Old Pueblo Community Services and Pima County Community Development and Neighborhood Conservation Department (CDNC) to approve the Contract Amendment to ratify the process that has already taken place (and lead to release of the HUD findings), for corrective actions to amend closing documents.

CONTRACT NUMBER (If applicable):

STAFF RECOMMENDATION(S):

Staff recommends approval by the Board of Supervisors

CORPORATE HEADQUARTERS: Tucson, Arizona

Page 1 of 2

Ver. 18
Vendor: 1
Pgs. 12

To: CoB. 12.24.13
Agenda 1-7-14
(2)

CLERK OF BOARD USE ONLY: BOS MTG. _____

ITEM NO. _____

PIMA COUNTY COST: _____ and/or REVENUE TO PIMA COUNTY: \$

FUNDING SOURCE(S): Federal Funds /HUD

(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO
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Board of Supervisors District:

1	<input type="checkbox"/>	2	<input type="checkbox"/>	3	<input type="checkbox"/>	4	<input type="checkbox"/>	5	<input type="checkbox"/>	All	<input checked="" type="checkbox"/>
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IMPACT:

IF APPROVED:

County shall authorize contract CT-CD 12000000000000000343 between Old Pueblo Community Services and Pima County Community Development and Neighborhood Conservation Department (CDNC) to approve the Contract Amendment to ratify the process that has already taken place (and lead to release of the HUD findings), for corrective actions to amend closing documents.

IF DENIED:

County shall not authorize contract CT-CD 12000000000000000343 between Old Pueblo Community Services and Pima County Community Development and Neighborhood Conservation Department (CDNC) to approve the Contract Amendment to ratify the process that has already taken place (and lead to release of the HUD findings), for corrective actions to amend closing documents.

DEPARTMENT NAME: Community Development and Neighborhood Conservation

CONTACT PERSON: Gary Bachman TELEPHONE NO.: 243-6673

<p>PIMA COUNTY DEPT. OF COMMUNITY DEVELOPMENT AND NEIGHBORHOOD CONSERVATION</p> <p>PROJECT NAME: NSP2 Consortium Funding Agreement</p> <p>CONTRACTOR: Old Pueblo Community Foundation <i>dba</i> Old Pueblo Community Services</p> <p>CONTRACT NO.: 12*343</p> <p>CONTRACT AMENDMENT NO.: TWO (2)</p>	<table border="1"> <tr> <th data-bbox="933 294 1437 346">CONTRACT</th> </tr> <tr> <td data-bbox="933 346 1437 409">NO. <u>CT. CD. 12000000000000000000 343</u></td> </tr> <tr> <td data-bbox="933 409 1437 451">AMENDMENT NO. <u>02</u></td> </tr> <tr> <td data-bbox="933 451 1437 556">This number must appear on all invoices, correspondence and documents pertaining to this contract.</td> </tr> </table>	CONTRACT	NO. <u>CT. CD. 12000000000000000000 343</u>	AMENDMENT NO. <u>02</u>	This number must appear on all invoices, correspondence and documents pertaining to this contract.
CONTRACT					
NO. <u>CT. CD. 12000000000000000000 343</u>					
AMENDMENT NO. <u>02</u>					
This number must appear on all invoices, correspondence and documents pertaining to this contract.					

ORIG CONTRACT TERM: 1/2/10 – 2/28/13	ORIG CONTRACT AMOUNT: \$600,000.00
TERMINATION DATE PRIOR AMENDS: 2/28/14	AMOUNT PRIOR AMENDS: -0-
TERMINATION THIS AGREEMENT: 2/28/14	AMOUNT THIS AMENDMENT: -0-
	REV CONTRACT AMOUNT: \$600,000.00

RECITALS

WHEREAS, pursuant to a Consortium Agreement executed by a consortium of nine members, Pima County (“County”) as lead member of the consortium, was awarded \$22,165,000.00 in Neighborhood Stabilization 2 (“NSP2”) grant funds from the U.S. Department of Housing and Urban Development (“HUD”); and

WHEREAS, Old Pueblo Community Foundation *dba* Old Pueblo Community Services (“Subrecipient”) was, as one of the nine consortium members, awarded \$600,000.00 of NSP2 funds for the construction of twenty (20) affordable houses (“the NSP2 homes”) on lots owned by Subrecipient in Sunnyside Pointe Subdivision; and

WHEREAS, Subrecipient, as a member of Sunnyside Pointe Development, L.L.C., also received funds under a separate contract for General Obligation Bond proceeds (Pima County Contract No. 03-70-S-142397-0909: “the GO Contract”); and

WHEREAS, although the NSP2 program allows homes using NSP2 funds to be sold to households with incomes up to 120% of the Area Median Income (“AMI”), the GO contract restricts sales to households with incomes at or below 80% AMI; and

WHEREAS, Subrecipient and La Frontera Partners, L.L.C., the current and sole members of Sunnyside Pointe Development, L.L.C., have exchanged certain lots in order to better promote the subdivision and meet the requirements set forth in various funding agreements; and

WHEREAS, pursuant to the terms of this NSP2 Consortium Funding Agreement (“Agreement”) and the GO Contract, Subrecipient completed the construction of nineteen (19) of the NSP2 homes and sold the homes to households with incomes at or below 80% AMI; and

WHEREAS, the Subrecipient is ready and willing to proceed with the sale of the final NSP2 home to an 80% AMI household; and

WHEREAS, HUD determined that the closing documents for the 19 NSP2 homes already sold were not in compliance with NSP2 requirements; and

WHEREAS, HUD has required that corrective actions be taken by the Parties to this Agreement; and

WHEREAS, Subrecipient has, as part of the corrective actions, agreed to ensure long term affordability of the 20 NSP2 homes, by exercising its right of first refusal in the event that a NPS2 homeowner chooses to sell the home prior to the expiration of the Affordability Period and receives a *bona fide* sales offer from a household with an income in excess of 80% AMI; and

WHEREAS, County has, as part of the corrective actions, agreed to reduce the NSP2 affordability liens on the NSP2 homes to a non-monetary deed restriction of twenty (20) years duration; and

WHEREAS, to fully implement and memorialize the corrective actions it is appropriate to amend the Agreement as set forth herein.

NOW, THEREFORE, the Parties agree to amend **EXHIBIT A, SCOPE OF WORK** as follows:

A. **Section A, Paragraph 2, Overview** is amended to change the lots owed by Subrecipient:

FROM: lots 66-99 and 115-120

TO: lots 62-71, 73-74, 81-100, 102, 104, 115-120

B. **Section B, Paragraph 4, Affordability** is amended as follows:

1. Delete **subparagraph 4(a)** in its entirety and replace with:

- a. The length of the Affordability Period for NSP2 purposes shall be twenty (20) years from the date of first occupancy. Other funding sources, including County proceeds contributed to the home under the GO Contract, for the construction of the NSP2 homes may require a longer Affordability Period and such longer Affordability Period shall be controlling.

2. Delete **subparagraph 4(c)** and Attachment 1 to Exhibit A in their entirety and replace with:

- c. The regulatory agreement, described in subparagraph B(4)(b) above, to secure affordability due to the use of NSP2 funds for the construction of the home shall have no monetary value, but shall be a restriction on the sale of the property to any person(s) with a household income in excess of 120% AMI. **The Resale Housing Restriction and Lien Agreements previously recorded shall be released upon the execution and recording of a new Resale Restriction for Affordable Housing. The releases and the resale restrictions shall be substantially in the form attached hereto as Attachment 1 – 2013. Once executed the documents shall be contemporaneously recorded in the Office of the Pima County Recorder.**

3. Add **subparagraph 4(d)** to read:

- d. For each NSP2-funded home sold, Subrecipient shall enter into an agreement with the homebuyer(s) at the time of closing that includes the following:
 - i. Buyer/Owner shall occupy the home as his or her primary residence throughout the term of ownership for at least nine (9) months per calendar year;
 - ii. Should the Buyer/Owner choose to sell the NSP2 home during the Affordability Period, the sale must be to a purchaser with a household income no more than 80% AMI; and
 - iii. In the event that Buyer/Owner receives a *bona fide* offer from a purchaser with a household income in excess of 80% AMI Subrecipient shall be notified and shall have a right to purchase the NSP2 home under the same terms and conditions as the *bona fide* offer.

4. Add **subparagraph 4(e)** to read:

- e. **Subrecipient shall exercise, or shall cause La Frontera Partners, Inc. to exercise, the right of first refusal on and shall purchase, or shall cause La Frontera Partners, Inc. to purchase, any NSP2 home for which Buyer/Owner receives a *bona fide* offer from a purchaser with a household income in excess of 80% AMI.** Upon purchase of the NSP2 home through the exercise of the right, Subrecipient shall retain, or shall ensure retention of, all affordability restrictions associated with the property. Failure to exercise the right of first refusal, for whatever reason, shall be considered an act of default. Such default shall be deemed to occur on the date of closing of escrow to a non-income qualified purchaser. In the event of such default, Subrecipient shall remit to County 1/20th of the NSP2 funds provided under this Agreement (\$30,000.00). Payment must be made no later than sixty (60) days after date default occurs.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

C. **Section D, Staffing** is amended to delete Lordes Frese from the list of key personnel.

The effective date of this Amendment shall be **August 1, 2013**.

All other provisions of this Agreement, not specifically changed by this Amendment, shall remain in effect and be binding upon the parties.

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

PIMA COUNTY

OLD PUEBLO COMMUNITY SERVICES

Chair, Pima County Board of Supervisors

Thomas Litwicki, CEO

Date: _____

Date: _____

ATTEST:

Clerk of the Board

APPROVED AS TO CONTENT:



Margaret Kish, Director
Community Development & Neighborhood
Conservation

APPROVED AS TO FORM:



Karen S. Friar, Deputy County Attorney

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PIMA COUNTY

OLD PUEBLO COMMUNITY SERVICES

Chair, Pima County Board of Supervisors



Thomas Litwicki, CEO

Date: _____

Date: 11-20-13

ATTEST:

Clerk of the Board

APPROVED AS TO CONTENT:

Margaret Kish, Director
Community Development & Neighborhood
Conservation

APPROVED AS TO FORM:

Karen S. Friar, Deputy County Attorney

ATTACHMENT 1 -- 2013

RELEASE OF RESALE HOUSING RESTRICTION AND LIEN AGREEMENT

WHEREAS, on _____, 20____, _____ ("Owner")
purchased certain real property ("the Property") described as:

Lot _____ of Sunnyside Pointe, according to the plat of record in the Office of the Pima County Recorder, recorded in Book 63 of Maps, Page 89 (the "Property"). The street address of the Property is _____, Tucson, AZ 85706. The Tax Parcel ID No. is _____.

WHEREAS, contemporaneous with the purchase of the Property, Owner executed a RESALE HOUSING RESTRICTION AND LIEN AGREEMENT ("the NSP2 Lien") obligating Owner to pay a sum certain to Pima County in the event that a sale of the Property did not comply with the terms set forth in the NSP2 Lien; and

WHEREAS, the indebtedness secured by the NSP2 lien was erroneous.

NOW, THEREFORE, Pima County hereby releases Owner from obligations with relation to the real property described above and secured by the RESALE HOUSING RESTRICTION AND LIEN AGREEMENT:

Executed by Owner on _____

Recorded in the Office of the Pima County Recorder on _____

Recorded at Sequence No. _____

PIMA COUNTY:

Approved as to Content:

Margaret Kish, Director
Community Development & Neighborhood Conservation

Betty Villegas, Program Manager

Date: _____

Approved as to Form:

Karen S. Friar, Deputy County Attorney

State of Arizona)
)
County of Pima)

Date of Acknowledgement: _____

Acknowledgement of Director, Community Development and Neighborhood Conservation Department, Pima County, AZ.

This instrument was acknowledged before me this date by the persons above subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.

Notary Public

My commission expires on: _____

When Recorded, Please Return To:

Pima County Community Development and Neighborhood Conservation
NSP2 Affordable Housing Program
2797 E. Ajo Way, 3rd Floor
Tucson, AZ 85713

RESALE RESTRICTION FOR AFFORDABLE HOUSING

THIS AGREEMENT (as it may be amended and modified from time to time, (the "Affordability Agreement"), is made as of _____, 2013, by and between _____, with a mailing address of _____ (collectively, if more than one, "Owner"), and PIMA COUNTY, a political subdivision of the State of Arizona, with a mailing address as set forth in the heading above ("County").

RECITALS

- A. Owner has purchased and resides at certain real property described as Lot _____ of Sunnyside Pointe, according to the plat of record in the Office of the Pima County Recorder, recorded in Book 63 of Maps, Page 89 (the "Property"). The street address of the Property is _____, Tucson, AZ 85706. The Tax Parcel ID No. is _____.
- B. The U.S. Department of Housing and Urban Development ("HUD") administers federal funds provided under the American Reinvestment and Recovery Act of 2009 (Public Law 111-005) for additional activities under Division B, Title III of the Housing and Economic Recovery Act of 2008 (Public Law 110-289), as amended, (together "the Acts").
- C. HUD, through the Acts, offered funds under the Neighborhood Stabilization Program 2 (NSP2) for activities that assist in the redevelopment of abandoned and foreclosed homes and prevent further decline of neighborhoods due to the housing crisis facing the nation.
- D. County was awarded NSP2 grant funding in the amount of \$22,165,000.00 and charged with distributing the money to nine consortium members for NSP2-eligible projects. Old Pueblo Community Services is a consortium member that received NSP2 funds pursuant to a Consortium Grant Agreement, Pima County Contract No. 12*343.
- E. In order to assist in making the Property affordable for Income-Qualified Persons, NSP2 funds were used to cover some of the development costs of the Property.
- F. Pursuant to NSP2 regulations, properties assisted with NSP2 funds must be continually affordable to low- and moderate-income households for not less than twenty (20) years.
- G. Contemporaneous with the purchase of the Property, Owner entered into a Resale Housing Restriction and Lien Agreement, recorded in the Office of the Pima County Recorder at Sequence No. _____, ("the NSP2 Lien"). The NSP2 Lien erroneously attributed a monetary value to the NSP2 Lien and required repayment of such monetary amount in the event the Property is sold to a non-income qualified person. Contemporaneous with the execution of this Affordability Agreement, County will release the NSP2 Lien.

AGREEMENT

1. **Use Restrictions.** The Property shall be subject to the following covenants regulating and restricting the use and transfer of the Property, commencing as of the date of Owner's purchase of the Property, _____, 20____ ("the Effective Date"). These restrictions shall be covenants running with the Property and shall bind Owner and Owner's successors and assigns for a period of twenty (20) years from and after the Effective Date. This Agreement shall be recorded in the Office of the Pima County Recorder.
 - 1.1. **Residential Use.** Owner shall use, and shall cause all occupants to use, the Property only for residential purposes and any incidental activities related to residential use that are currently permitted by applicable state and local zoning laws. Owner shall occupy the Property for at least nine (9) months of each full year during which Owner holds legal title to the Property. Occupancy by children or other immediate family members or dependents of Owner shall be considered occupancy by Owner.
 - 1.2. **Transfers.** Owner shall only convey the Property to an Income-Qualified Person except as otherwise specifically permitted herein. "Income-Qualified Person" shall mean a person or group of persons whose household income does not exceed one hundred twenty percent (120%) of the median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor agency. A proposed buyer's status as an Income-Qualified Person shall be verified in writing by County or a local Community Housing Development Organization in good-standing with HUD or a HUD-certified homebuyer counseling agency. In the event that a more restrictive transfer covenant is associated with the Property, that restrictive covenant shall supersede the terms of this Paragraph 1.2.
2. **Transfer to Owner's Heirs.** Notwithstanding the provisions of Section 1 above, following the death of Owner, Owner's interest in the Property may be transferred to one or more of the following possible heirs of Owner: the spouse of Owner, any child or children of Owner, or members of Owner's household who have resided on the Property for at least one (1) year immediately prior to Owner's death. This Affordability Agreement will survive such a transfer and will continue to bind the Property.
3. **Injunctive Relief.** County shall have the right to enforce this Affordability Agreement by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, which shall be in addition to, and not in limitation of, any other rights and remedies available to County.
4. **Severability.** If any provision of this Affordability Agreement shall to any extent be held invalid, the remainder shall not be affected but will remain in effect and valid and enforceable by the parties by any legal or equitable means.
5. **Recordation of Documents.** The benefits of this Affordability Agreement shall be assignable by County to any successor institution or nonprofit affordable housing organization. To the extent that the enforceability of this Affordability Agreement by any person ever depends upon the approval of governmental officials, such approval, when given, shall relate back to the date of recordation hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.

6. **Notice.** Any notice, request or other communication that any party hereto may be required or may desire to give to County or Owner shall be made in writing and shall be deemed to have been properly given if mailed by United States registered or certified mail, postage prepaid, return receipt requested, or hand delivered, and addressed as follows, or such other address as the applicable party may have furnished in writing to the party seeking to serve notice as a place for the service of notice, provided, however, that Owner shall use reasonable business efforts to ascertain the mailing address of County that is current as of the date of such notice:

County: Director
 Pima County Community Development and Neighborhood Conservation
 Affordable Housing Program
 2797 E. Ajo Way, 3rd Floor
 Tucson, AZ 85713

Owner: Notice to Owner shall be provided at the address of the Property.

7. **Restraint on Alienation.** If this Affordability Agreement is deemed unenforceable by virtue of its scope in terms of purpose or eligibility of Income-Qualified Persons, but would be enforceable by reducing or increasing, as applicable, any part or all thereof, the same shall be enforced to the fullest extent permissible under the laws and public policies applied in the State of Arizona.

SIGNATURES FOLLOW ON TWO (2) SEPARATE PAGES

[Owner's Name]

[Owner's Name]

STATE OF ARIZONA)
) ss.
County of Pima)

 This instrument was acknowledged before me this ____ day of _____, 2009, by
_____ and _____.

Notary Public

My Commission Expires:

PIMA COUNTY:

Ramón Valadez, Chairman of the Board of Supervisors

Date

ATTEST:

Robin Brigode, Clerk of the Board

Date

STATE OF ARIZONA)
) ss
County of Pima)

This instrument was acknowledged before me, the undersigned authority, on this ____ day of _____, 2013, by Ramón Valadez as the Chairman of the Pima County Board of Supervisors.

Notary Public

APPROVED AS TO CONTENT:

Margaret Kish, Director, Community Development and
Neighborhood Conservation

Date

APPROVED AS TO FORM:

Karen S. Friar, Deputy Pima County Attorney