



Board of Supervisors Memorandum

October 15, 2013

**Settlement Agreement with the City of South Tucson Regarding
Payment of Delinquent Fees for Incarceration of Prisoners**

Introduction

Attached please find a proposed resolution and Settlement Agreement I recommend be approved by the Board of Supervisors to settle the delinquent account of the City of South Tucson related to incarceration of prisoners at the Pima County Adult Detention Center. I believe this Settlement Agreement is superior to litigation.

The total debt, including interest, is \$1,940,718.71. Through negotiations with the South Tucson City Manager, an agreement has been reached for payment of most of this debt.

Under the terms of the Settlement Agreement, the County would waive the delinquent interest computed at the statutory interest rate, which is significantly higher than the interest rate available in the market today. The County would also waive delinquent fees in the amount of \$200,000. The balance of the amount due, \$1,134,566.22, would be payable, including the amount due for May 2013 through July 2013.

The City of South Tucson would make an initial down payment of \$150,000 upon execution of the Settlement Agreement and would pay the balance due the County of \$988,566.22 over 10 years in 10 equal installments with an interest rate of 1.5 percent. Please note the current interest rate on long-term investments in the local government investment pool yields the County approximately same interest rate.

Recommendation

I recommend the Board of Supervisors approve the attached Resolution 2013-____ and Settlement Agreement in settlement of the delinquent account of the City of South Tucson for prisoner incarceration.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "C. Huckelberry".

C.H. Huckelberry
County Administrator

CHH/mjk – **REVISED** October 11, 2013
Attachments

c: The Honorable Clarence Dupnik, Pima County Sheriff
Chris Straub, Chief Civil Deputy County Attorney

RESOLUTION NO. 2013-_____
PIMA COUNTY

RESOLUTION AUTHORIZING SETTLEMENT IN LIEU OF LITIGATION OF
DELINQUENT FEES AND INTEREST OWED BY THE CITY OF SOUTH TUCSON FOR
INCARCERATION OF PRISONERS AND APPROVAL OF SETTLEMENT AGREEMENT

WHEREAS, in accordance with the provisions of A.R.S. §31-121 *et. seq.*, the Board of Supervisors has, since FY 1998-1999 entered into an annual Intergovernmental Agreement (IGA) with City of South Tucson, Arizona, pursuant to which Pima County has housed prisoners arrested by and convicted in the municipal court system of City of South Tucson, and

WHEREAS, City of South Tucson pursuant to A.R.S. §31-121.D is, and under the terms of the IGA has agreed to be, responsible for the first day's and succeeding days' costs per prisoner at a cost established in the IGA, for each of its prisoners housed in the Pima County Adult Detention Center, and

WHEREAS, City of South Tucson has, over the years of these IGAs, been unable to keep current with the payments to Pima County for the housing of its arrestees and convicts, and as of July 31, 2013, owed Pima County \$1,940,721.71 in principal and interest, of which amount \$146,434.25 is principal delinquent for more than three years, and \$606,152.49 is accumulated interest on the delinquent debt, totaling \$752,586.74 in delinquent fees more than three years old plus interest, and

WHEREAS, attempts have been made by Pima County to collect the total amount owed from the City of South Tucson, and it appearing that the City of South Tucson is currently unable to pay the entire amount of delinquent fees and interest owed, and

WHEREAS, in lieu of litigation, Pima County and the City of South Tucson desire to enter into a Settlement Agreement where the City of South Tucson will pay Pima County portions of the amounts due in full settlement of the delinquent fees and interest,

NOW, THEREFORE, BE IT RESOLVED, that \$806,152.49 of the debt be written off by the Board of Supervisors as uncollectible, contingent upon the City of South Tucson entering into, and fully performing under the terms of, a written settlement with Pima County providing for payment of the remaining delinquent fees in the amount of \$1,134,566.22 on or before October 30, 2013, and

BE IT FURTHER RESOLVED, that in the event the City of South Tucson fails to enter into a written agreement for the settlement of the remaining collectible debt on terms agreeable to Pima County, on or before October 30, 2013, then this Resolution shall be null and void retroactive to the date of its passage,

BE IT FURTHER RESOLVED, that the Chairman of the Pima County Board of Supervisors is authorized and directed to sign the Settlement Agreement between Pima County and the City of South Tucson, and staff directed to take the requisite actions to implement it.

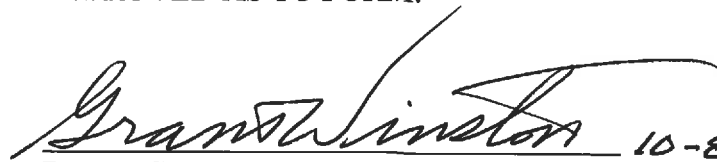
Passed by the Board of Supervisors of Pima County, this __ day of _____, 2013.

By: Ramon Valadez, Chairman,
Board of Supervisors

ATTEST:

APPROVED AS TO FORM:

Clerk of the Board



Deputy County Attorney 10-8-13

SETTLEMENT AGREEMENT
Pima County and the City of South Tucson

- 1. Parties:** This settlement agreement ("Agreement") is made by and between Pima County, a body politic and political subdivision of the State of Arizona ("County") and City of South Tucson ("City") an Arizona municipal corporation.
- 2. Recitals:**
 - 2.1** The parties have since, Fiscal Year 1998-1999, pursuant to A.R.S. § 31-121 and A.R.S. § 11-952, entered into annual Intergovernmental Agreements ("IGAs") whereby County would house City's prisoners for a cost agreed upon by and between the parties.
 - 2.2** The City has, over the years, fallen into arrears on the payments pursuant to the IGAs.
 - 2.3** As of July 31, 2013, City had not paid a total of \$1,334,569.22 of fees for services ("Fees") for the following time periods:
 - June 1999 – June 2000 balance: \$146,434.25
 - May 2007 – December 2011 balance: \$1,152,256.23
 - May – July, 2013 balance: \$35,875.74In addition to these amounts, the City has interest charges ("Interest Charges") in the amount of \$606,152.49, for a total amount of Fees and Interest Charges of \$1,940,721.71.
 - 2.4** City agrees to a payment plan of \$1,134,566.22 (the "Settlement Amount") for full payment of all Fees.
 - 2.5** City agrees to make an initial payment of \$150,000, immediately upon execution of this agreement by City and County.
 - 2.6** City agrees to pay the \$984,566.22 balance of the Settlement Amount, over a 10 year period, in 10 equal installments of \$106,760.63, as shown on Exhibit 1 to this Settlement Agreement, each installment being due and payable on or before October 31 of each year until fully paid.
 - 2.7** City agrees to pay interest at the rate of 1.5% per annum, accruing beginning November 1, 2013, on the outstanding Settlement Amount until paid in full.
 - 2.8** In consideration of the City's payment in full of the Settlement Amount, County agrees to write-off \$200,000.00 of the Fees and to waive the accumulated \$606,152.49 Interest Charges due (totaling \$806,152.49). This waiver and write-off by the County are revocable at any time the City fails to make the required payment, and such failure is not remedied within 10 business days of written notice.
 - 2.9** The parties agree that the write-off and waivers by the County are contingent upon City making its payment obligations recited herein. If City fails to make payment in full as stated above, the

entire amount of the Fees and Interest Charges as set forth in Section 2.3 (less any payments already made) plus continually accruing interest shall become due and owing at the election of County, and County may take all steps necessary for collection.

3. **Entire Agreement:** This Agreement contains all the terms and conditions of and express the complete and only agreement among the Parties with respect to its subject matter. This Agreement shall not be modified or amended except through a writing signed by the Parties. No supplement, modification, or waiver of this Agreement or any of its provisions shall be implied by the conduct of the Parties, or by custom, trade, or usage.
4. **Full and Complete Performance:** The failure of County to insist on one or more instances upon the full and complete performance with any of the terms or conditions of this Agreement, or to take any action permitted as a result thereof, shall 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 the County of sums less than may be due and owing at any time shall not be construed as an accord and satisfaction.
5. **Counterparts:** This Agreement may be executed in counterparts, and each such counterpart shall constitute an original, but all counterparts shall constitute one and the same instrument.
6. **Effective Date:** This Agreement shall be effective on the date that all parties have executed and approved and adopted the Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the date and year as set forth below.

FOR PIMA COUNTY:

_____ the ____ day of _____, 2013.
Ramon Valadez, Chairman
Pima County Board of Supervisors

ATTEST:

_____ the ____ day of _____, 2013.
Clerk of the Pima County
Board of Supervisors

APPROVED AS TO FORM:

Grant Whitton
Deputy Pima County Attorney

the 11th day of October, 2013.

FOR CITY OF SOUTH TUCSON:

Paul Diaz
Paul Diaz, Mayor

the 9th day of October, 2013

ATTEST:

Jamie Attles
City Clerk

the 9th day of October, 2013

APPROVED AS TO FORM:

ACT
City Attorney

the 9th day of October, 2013



EXHIBIT 1

City of South Tucson
Calculation of Annual Financing Costs
\$984,566.22 Balance Due Pima County

Loan Amount:	\$984,566.22	Scheduled Payment Amount:	\$106,760.63
Interest Rate (%):	1.50%	Total No. Payments:	10
Number of Years:	10	Total Payment Amount:	\$1,067,606.29
Number of Payments Per Year:	1	Total Interest Paid:	\$83,040.07
Start Date (optional):	15-Oct-2014	Date of Last Payment:	15-Oct-2024

Payment No.	Date	Start Balance	Payment Amount	Capital Paid	Interest Paid	Remaining Balance
1	15-Oct-2015	\$984,566.22	\$106,760.63	\$91,992.14	\$14,768.49	\$892,574.08
2	15-Oct-2016	\$892,574.08	\$106,760.63	\$93,372.02	\$13,388.61	\$799,202.07
3	15-Oct-2017	\$799,202.07	\$106,760.63	\$94,772.60	\$11,988.03	\$704,429.47
4	15-Oct-2018	\$704,429.47	\$106,760.63	\$96,194.19	\$10,566.44	\$608,235.28
5	15-Oct-2019	\$608,235.28	\$106,760.63	\$97,637.10	\$9,123.53	\$510,598.18
6	15-Oct-2020	\$510,598.18	\$106,760.63	\$99,101.66	\$7,658.97	\$411,496.53
7	15-Oct-2021	\$411,496.53	\$106,760.63	\$100,588.18	\$6,172.45	\$310,908.35
8	15-Oct-2022	\$310,908.35	\$106,760.63	\$102,097.00	\$4,663.63	\$208,811.34
9	15-Oct-2023	\$208,811.34	\$106,760.63	\$103,628.46	\$3,132.17	\$105,182.89
10	15-Oct-2024	\$105,182.89	\$106,760.63	\$105,182.89	\$1,577.74	\$0.00