



Contract number: CTN. CD. 13 X 383  
Effective Date: 10-1-13  
Term Date: 9-30-16  
Cost: ✓  
Revenue: ✓  
Total:                      NTE:                       
Action: 7-1-16  
Renewal By:                       
Term: 9-30-16  
Reviewed by:                     

## **BOARD OF SUPERVISORS AGENDA ITEM SUMMARY**

Requested Board Meeting Date: July 2, 2013

### **ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATION**

**Resolution Approving and Authorizing the Intergovernmental Cooperative Agreement between Pima County and City of Tucson to form a Consortium to participate in the U.S. Department of Housing and Urban Development's HOME Investment Partnership Program to provide homeownership opportunities and to preserve and develop rental housing for low-income persons.**

**CONTRACT NO. (If applicable):** CTN CD 13 X 0383

### **STAFF RECOMMENDATION(S):**

**To be approved by Board of Supervisors.**

**CORPORATE HEADQUARTERS:** Tucson, AZ

To: CHH - 6-26-13 By Dept  
CoB - 6-27-13  
Agenda 7-2-13  
Addendum (3)

JUN 26 13 PM 04:40 PC CLK OF BO

Procure Dept 06/26/13 PM 04:02

CLERK OF BOARD USE ONLY: BOX M.G. \_\_\_\_\_

ITEM NO. \_\_\_\_\_

PIMA COUNTY COST: \$ n/a REVENUE TO PIMA COUNTY: \$ n/a

FUNDING SOURCE: Federal – HUD HOME Investment Partnerships Program (HOME Program)

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

**Advertised Public Hearing:**

		YES	X	NO
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**Board of Supervisors District:**

1		2		3		4		5		All	XX
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**IMPACT:**

**IF APPROVED:**

***Pima County and City of Tucson will form a Consortium to participate in the HOME Investment Partnership Program to provide homeownership opportunities and to preserve and develop rental housing for low-income persons.***

**IF DENIED:**

***Pima County and City of Tucson will NOT form a Consortium to participate in the HOME Investment Partnership Program and as result, will NOT be able to provide homeownership opportunities or preserve and develop rental housing for low-income persons with resources from the HUD the HOME Investment Partnership Program.***

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DEPARTMENT NAME: Community Development and Neighborhood Conservation Dept.

CONTACT: Marcos Ysmael TELEPHONE NO.: 243-6752

**RESOLUTION NO. 2013 - \_\_\_\_\_**

**RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF THE  
INTERGOVERNMENTAL AGREEMENT BETWEEN PIMA COUNTY  
AND THE CITY OF TUCSON TO ESTABLISH THE TERMS AND  
CONDITIONS OF THE CONSORTIUM FOR THE HOME INVESTMENT  
PARTNERSHIPS PROGRAM**

WHEREAS, Pima County ("County") and the City of Tucson ("Tucson") may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-952 *et seq.*; and,

WHEREAS, the Pima County Board of Supervisors recognizes the need to increase the supply of affordable housing for low-income families in Pima County; and,

WHEREAS, pursuant to the provisions A.R.S. § 36-1401 *et seq.*, County is authorized to engage in or assist in the development or operation of housing for low-income families; and

WHEREAS, an Urban County is a county which is authorized to undertake essential community development and housing assistance activities in cooperation with units of local government; and

WHEREAS, County qualifies as an Urban County; and

WHEREAS, County desires to participate in the HOME Investment Partnership Program (HOME), created by the National Affordable Housing Act of 1991, through which federal funds are made available to provide homeownership opportunities and to preserve and develop rental housing for low-income persons; and

WHEREAS, County will achieve a greater allocation of HOME funds by forming a consortium with Tucson; and

WHEREAS, pursuant to Chapter VII, Section I, Subsections 32 and 33 of the Tucson City Charter, Tucson is authorized to engage in or assist in the development or operation of housing for low income families; and

WHEREAS, Tucson is willing and able to enter into a consortium agreement with County and serve as the Lead Entity of the City of Tucson Pima County HOME Consortium.

NOW, THEREFORE, BE IT RESOLVED THAT, the Intergovernmental Cooperative Agreement between Pima County and City of Tucson to form a Consortium to participate in the HOME Investment Partnership Program to provide homeownership opportunities and to preserve and develop rental housing for low-income persons; and

BE IT FURTHER RESOLVED THAT the Chair of the Board is authorized to sign the Intergovernmental Cooperative Agreement and any documents necessary to its execution.

PASSED AND ADOPTED by the Pima County Board of Supervisors on \_\_\_\_\_, 2013.

**BOARD OF SUPERVISORS:**

\_\_\_\_\_  
Chairman, Board of Supervisors

**ATTEST:**

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

**APPROVED AS TO FORM:**

  
Karen S. Friar, Deputy County Attorney

CONTRACT	
NO. <u>CTN-CD-13000000000000000000</u>	<u>383</u>
AMENDMENT NO. _____	
This number must appear on all invoices, correspondence and documents pertaining to this contract.	

INTERGOVERNMENTAL COOPERATIVE AGREEMENT  
BETWEEN  
PIMA COUNTY AND CITY OF TUCSON  
FOR THE  
CONSORTIUM OF THE FEDERAL HOME PROGRAM  
FOR THE  
FEDERAL FISCAL YEARS 2013, 2014 AND 2015

This Intergovernmental Cooperative Agreement ("Agreement"), is entered into by and between the County of Pima, a body politic and corporate of the State of Arizona, hereinafter referred to as "County", and the City of Tucson, a municipal corporation of the State of Arizona, hereinafter referred to as "City".

WITNESSETH

WHEREAS, County and City may contract for services and enter into agreements with one another for joint and cooperative action pursuant to A.R.S. § 11-925, *et seq.*; and

WHEREAS, County is authorized to engage in or assist in the development of housing for low-income families pursuant to A.R.S. § 36-1401, *et seq.*; and

WHEREAS, County desires to participate in the HOME Investment Partnerships Program ("HOME") as authorized by the HOME Investment Partnerships Act, ("the Act"), Title II of the Cranston-Gonzalez National Affordable Housing Act of 1991 (42 U.S.C. 12701), as amended, through which federal funds are made available to states and local governments for the acquisition, rehabilitation and new construction of affordable housing and tenant-based rental assistance; and

WHEREAS, the Act allows units of general local government to join together to form a consortium for the purpose of receiving a HOME allocation and for administering the HOME program as a single Participation Jurisdiction (PJ); and

WHEREAS, the Secretary of HUD determines that the consortium has sufficient authority and administrative capacity to carry out the purposes of the Act on behalf of its member units of local government; and

WHEREAS, the HUD Field Office approves the renewal of consortium agreements during the current fiscal year by August 1 to ensure the consortia will be eligible to receive HOME funds in the next federal fiscal year; and

WHEREAS, County and City formed the City of Tucson Pima County HOME Consortium in 1992 for purposes of applying for and obtaining HOME program funds; and

WHEREAS, Pima County is an urban county as defined by Section 102(a)(6) of the Housing and Community Development Act of 1974, as amended, and authorized to undertake essential community development and housing assistance activities in its unincorporated areas which the U.S. Department of Housing and Urban Development ("HUD") has determined to have sufficient persons of low and moderate income that reside in the county, and which has entered into cooperative agreements with units of local government to undertake or to assist in such undertakings; and

WHEREAS, County will achieve a greater allocation of HOME Program funds by forming a consortium with City; and

WHEREAS, City is authorized to engage in or assist in the development or operation of housing for low-income families pursuant to Chapter VII, Section 1, Sub-sections 32 and 33 of the Tucson City Charter; and

WHEREAS, County and City agree that it is desirable and in the interests of their citizens to secure status as a Participating Jurisdiction under the HOME Program and that such Participating Jurisdiction shall be referred to as the City of Tucson Pima County HOME Consortium.

NOW THEREFORE, County and City in consideration of the matters and things hereinafter set forth do mutually agree as follows:

#### I. PURPOSE

The purpose of the Agreement is to renew a consortium of the geographically contiguous units of local government including the City of Tucson and urban county known as Pima County as described in the HOME Investment Partnerships (HOME) Program at 24 CFR 92.101 for the Federal Fiscal Years 2014 through 2016. The consortium was originally formed pursuant to an intergovernmental agreement authorized by City of Tucson, in Resolution No. 16051, dated July 6, 1992, and by Pima County, the Urban County, in Resolution No. 1992-126, dated July 21, 1992.

#### II. PROGRAM ACTIVITY

County and City, as the consortium members agree to cooperate in undertaking, or to assist in undertaking, housing assistance activities for the HOME Program.

#### III. REPRESENTATIVE APPOINTMENT

County and City as consortium members mutually agree that the City of Tucson has sufficient legal authority and administrative capacity to carry out the purposes of the HOME program on behalf of the consortium and therefore, City shall act as the Representative Member in its capacity as the Lead Entity of the City of Tucson Pima County HOME Consortium.

#### IV. REPRESENTATIVE RESPONSIBILITIES

City assumes overall responsibility for ensuring the consortium's HOME Program is carried out in compliance with the requirements of the HOME Program including requirements concerning the Consolidated Plan.

#### V. FAIR HOUSING

Each member of the consortium agrees to affirmatively further fair housing.

## VI. TERM

For purposes of the Consortium, the Fiscal Year means the federal government fiscal year which runs from October 1 of one calendar year through September 30 of the following calendar year. The qualification period for this Agreement shall be comprised of Fiscal Years 2013, 2014 and 2015 during which time the members will have the authority to carry out activities funded by the annual HOME Program. All members of the consortium are prohibited from withdrawing while this Agreement remains in effect.

## VII. PROGRAM YEAR

As required by the Consolidated Plan Final Rule at 24 C.F.R. § 91.402 (a), the program year for the City of Tucson Pima County HOME Consortium shall be the same program year which begins October 1, 2013 and ends on September 30, 2016, a period of three years.

## VIII. AUTHORITY TO AMEND AGREEMENT

The City of Tucson as Lead Entity of the Consortium is authorized to amend the Agreement to add new members or to incorporate automatic renewal of federal HOME Program grant agreements or for other reasons approved by the U.S. Department of Housing and Urban Development.

## IX. EFFECT OF CONSORTIUM FORMATION ON EXISTING PROGRAM DESIGN AND IMPLEMENTATION

This Agreement does not impact the existing programs of the Consortium.

## X. ROLES AND RESPONSIBILITIES OF THE MEMBER JURISDICTIONS

### A. The City of Tucson will:

- i. Execute a Sub-Recipient Agreement with County providing for the City's and the County's responsibilities for implementing and complying with the HOME Program.
- ii. Be responsible for obtaining the necessary matching funds for all of the City of Tucson HOME Program projects within its jurisdiction as required by the HOME regulations.
- iii. Determine the projects to be funded by its formula allocation. Nothing in this agreement will preclude the ability of any member jurisdiction either individually or jointly from applying for financial assistance under the State of Arizona HOME Program.
- iv. Review and underwrite specific projects that are eligible for HOME funding in its jurisdiction.
- v. Enter into sub-recipient agreements, in addition to the agreement with County, for HOME-funded projects within its jurisdictional boundaries.
- vi. Monitor sub-recipients for compliance with HOME requirements during the project implementation and the affordability period.
- vii. Ensure its HOME-funded projects comply with applicable local codes and standards as well as federal regulations for lead-based paint hazards.
- viii. Design and implement its HOME program activities in accordance with HUD regulations, taking into consideration the needs and wants of its constituents.
- ix. Abide by HOME requirements throughout the period of affordability for funded projects.

- x. Ensure that the funding decisions for the City-implemented HOME projects are authorized by the Mayor and Council.
- xi. Adhere to the terms and conditions of the HOME Investment Partnership Intergovernmental Agreement for Subrecipient between City of Tucson and Pima County for the period beginning July 1, 2013 and ending June 30, 2016.

**B. Pima County will:**

- i. Enter into Intergovernmental Cooperative Agreements with each willing unit of local government with the Urban County, excluding the City of Tucson, whereby each participating unit of local government delegates the power to County to select which community development projects will be funded in accordance with the approved Community Development and Housing Consolidated Plan pursuant to 24 CFR Part 91. Furthermore, such agreements will provide that each unit of local government that enters into a cooperative agreement will only participate in County's CDBG and HOME consortium programs.
- ii. Be responsible for obtaining the necessary matching funds for all of the Pima County HOME Program projects within its jurisdiction as required by the HOME regulations.
- iii. Determine the projects to be funded by its formula allocation. Nothing in this agreement will preclude the ability of any member jurisdiction either individually or jointly from applying for financial assistance under the State of Arizona HOME Program.
- iv. Review and underwrite specific projects that are eligible for HOME funding in its jurisdiction.
- v. Enter into sub-recipient agreements, in addition to the agreement with for projects funded with County's distribution of HOME funds.
- vi. Monitor sub-recipients for compliance with HOME requirements during the project implementation and the affordability period.
- vii. Ensure its HOME-funded projects comply with local codes and standards as well as federal regulations for lead-based paint hazards.
- viii. Design and implement its HOME program activities in accordance with HUD regulations, taking into account the needs and wants of the constituents in the area being served by the project.
- ix. Abide by HOME requirements throughout the period of affordability for funded projects.
- x. Ensure that the funding decisions for county HOME projects are authorized by the Pima County Board of Supervisors.
- xi. Adhere to the terms and conditions of the HOME Investment Partnership Intergovernmental Agreement for Subrecipient between City of Tucson and Pima County for the period beginning July 1, 2013 and ending June 30, 2016.

**XI. ROLES AND RESPONSIBILITIES OF THE CITY AS THE LEAD ENTITY**

In accordance with HUD directives, City shall be the Lead Entity of the Consortium and shall assume all responsibilities for the consortium including, but not limited to:

- A. Maintaining compliance with federal requirements for operation of the HOME program in accordance with applicable federal regulations and the requirements related to the Consolidated Plan as set forth in 24 C.F.R. Part 91.
- B. Establishment, maintenance and accounting for the HOME Investment Trust Fund Account.



- C. On behalf of the consortium, applying for HOME program funding.
- D. Upon notification of the award of HOME funding from HUD, meeting with county to review and discuss how these funds will be allocated among the members for administrative and project costs.
- E. Upon City and County agreement regarding the distribution of any new HOME allocation, City shall develop and execute an amendment to the County SubRecipient Agreement to provide a new budget and incorporate any other changes approved by the Parties.
- F. Communicating with County on all important HOME program notices, funding awards, monitoring visits and other important activities.
- G. Assuming the rights and responsibility for monitoring and assuring compliance with all HOME requirements during the project implementation and the affordability period. Meeting with County to discuss any plans to reallocate funds from any sub-recipient for nonperformance or noncompliance prior to reallocating such funds.

## XII. JOINT RESPONSIBILITIES OF THE CITY AND THE COUNTY PERTAINING TO THE CONSOLIDATED PLAN AND CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER)

Both Parties will:

- A. Prepare, schedule and participate in public meetings and other events regarding the Consolidated and Annual Plans in compliance with 24 CFR Part 91.
- B. Exchange copies of documents that are submitted to HUD to meet the requirements of 24 CFR Part 91.
- C. Meet quarterly to review HOME Program fund encumbrances and expenditures, the status of all HOME projects, Consortium accomplishments and opportunities for improving the delivery of affordable housing activities to the residents of Pima County, review and discuss new HOME regulations and directives as the impact current and future projects and programs

## XIII. RESPONSIBILITIES OF THE CITY AND THE COUNTY PERTAINING TO THE COMMUNITY HOUSING AND DEVELOPMENT ORGANIZATIONS (CHDOS) REQUIREMENT

Both Parties will cooperate to:

- A. Jointly review and certify CHDOs for eligibility on an annual basis.
- B. Jointly issue Requests for Proposals to CHDOs on an annual basis, or as often as mutually agreed.
- C. Administer and oversee CHDO projects in their respective jurisdiction.
- D. Jointly oversee and provide technical assistance as needed to ensure CHDO funded activities affirmatively furthering fair housing opportunities.
- E. Ensure environmental reviews consistent with HUD regulations and guidelines are conducted for all HOME funded projects.

## XIV. PROGRAM INCOME

Program income ("proceeds") shall be returned to City unless City authorizes in writing that all, or a specific portion thereof, may be retained by County for administration and eligible projects as allowable by HOME Regulations. Proceeds returned to City for use by county for eligible projects and added to the allocated HOME funds set forth in the City-County HOME Sub-recipient Agreement.

#### XV. CONFLICT OF INTEREST

This agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.

#### XVI. AMERICANS WITH DISABILITY ACT

City and County shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act including 28 CFR Parts 35 and 36.

#### XVII. NON-DISCRIMINATION

The parties agree to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive Order 99-4, amends Executive Order 75-5, and may be viewed and downloaded at the Arizona Office of the Governor's website, [http://www.azgovernor.gov/dms/upload/EO\\_2009\\_09.pdf](http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf), which is hereby incorporated into this Agreement as if set forth in full herein. During the performance of this Agreement, the Parties shall not discriminate against any employee, client, or any other individual of the other jurisdiction, in any way, because of that person's age, race, creed, color, religion, sex, disability or national origin.

#### XVIII. WORKERS COMPENSATION

Each party shall comply with the notice of A.R.S. § 23-1022 (E). For purposes of A.R.S. § 23-1022 each Party shall be considered the primary employer of all personnel currently or hereafter employed by that Party, irrespective of the operation of protocol in place, and said Party shall have the sole responsibility for the payment of Workers Compensation benefits or other fringe benefits of said employees.

#### XIX. RIGHTS AND DUTIES OF PARTIES

This Agreement is intended to govern the rights and duties of the contracting parties only and is not intended to confer any third party any rights or benefits which would not exist in the absence of this Agreement.

#### XX. SEVERABILITY

If any provisions of this Agreement, or any application thereof to the Parties or any person or circumstances is held invalid such invalidity shall not affect other provisions or applications of this Agreement which can be given effect, without the invalid provision or application and to this end the provisions of this Agreement are declared to be severable.

#### XXI. NON-APPROPRIATION

Notwithstanding any other provisions in this Agreement, this Agreement may be terminated if for any reason the Pima County Board of Supervisors and/or the City of Tucson Mayor and Council do not appropriate sufficient monies for the purpose of maintaining this Agreement other than for payment for services rendered prior to cancellation.

## XXII. INDEMNIFICATION

Each Party, as Indemnitor, agrees to indemnify, defend and hold harmless the other Party, as Indemnitee, from and against any and all claims, losses, liability, costs or expenses including reasonable attorney fees (hereinafter collectively referred to as "claims") arising out of bodily injury (including death) of any such person or property damage, but only to the extent that such claims which result in vicarious or derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers in the performance of this Agreement.

## XXIII. 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 either Party and the other Party's employees. Neither party shall be liable for any debts, accounts, obligations nor 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.

## XXIV. 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.

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

XXV. ENTIRE AGREEMENT

This document constitutes the entire Agreement between parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Agreement shall not be modified, amended, altered, or extended except through a written amendment signed by the parties and recorded with the Pima County Recorder.

IN WITNESS WHEREOF, the parties agree to affix their signatures to execute this Agreement on the dates written below: **THIS AGREEMENT MAY BE SIGNED IN COUNTERPART.**

PIMA COUNTY:  
BOARD OF SUPERVISORS

CITY OF TUCSON:  
MAYOR AND COUNCIL

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

\_\_\_\_\_  
Mayor      Date

ATTEST:

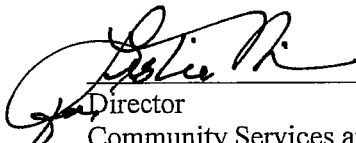
COUNTERSIGNED AND ATTESTED:

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

\_\_\_\_\_  
City Clerk      Date

REVIEWED BY:

REVIEWED BY:

 6-26-13  
\_\_\_\_\_  
Director      Date  
Community Services and Neighborhood  
Conservation Department

\_\_\_\_\_  
Director      Date  
Housing and Community Development  
Department

ATTORNEY CERTIFICATION

The foregoing Intergovernmental Agreement between Pima County and the City of Tucson creating a consortium for participation in the HOME Program has been reviewed, pursuant to A.R.S. § 11-952 by the undersigned Deputy County Attorney and the City of Attorney who have determined that is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Agreement represented by Pima Count and the City of Tucson.

PIMA COUNTY

CITY OF TUCSON

APPROVED AS TO FORM:

APPROVED AS TO FORM:

 6-25-13  
\_\_\_\_\_  
Karen S. Friar, Deputy County Attorney      Date

\_\_\_\_\_  
City Attorney      Date