




MEMORANDUM

To: Harry Lewis, Contract Specialist, Procurement

From: Martha Martin, Project Coordinator, CDNC 

Cc: Marcos Ysmael, Program Manager
Denise Sauer, Contract Specialist

Date: February 28, 2017

Subject: Intergovernmental Agreement (IGA) between Pima County and City of Tucson for the Consortium of the Federal HOME Program, FY 2017, 2018 and 2019

On July 5, 2016, the Board of Supervisors approved this IGA which specified FYs 2016, 2017 and 2018 (see attached copy of the Agenda, Addendum 1, Item no. 9). After it was fully executed by City and County, it was submitted to the U.S. Department of Housing and Urban Development. They required the IGA be revised to show the correct FYs of 2017, 2018 and 2019.

I hereby submit three copies of the corrected IGAs signed by the Mayor. Please request the Chair of the Board of Supervisors to sign each IGA, then return all three to the City Clerk who will complete the re-recording. The City Clerk's address is noted on the orange label affixed to each IGA. FYI, that address is:

CITY CLERK
ATTN: AGENDA SECTION
P O BOX 27210
TUCSON, AZ 85726 - 7210

If you have any questions, please contact me (ph: 724-2463; email: Martha.Martin@pima.gov) or Marcos Ysmael (ph: 724-2462; marcos.ysmael@pima.gov)

Thank you.

CONTRACT	
NO.	<u>CTN-CD-16-209</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 2017, 2018 AND 2019

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 2017 through 2019. 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

The consortium members agree to cooperate in undertaking, or to assist in undertaking housing assistance activities for the HOME Program.

III. REPRESENTATIVE APPOINTMENT

The county and city as 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, 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

The City of Tucson 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 2017, 2018 and 2019 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, 2016, and ends on September 30, 2019, a period of three years.

VIII. AUTHORITY TO AMEND AGREEMENT [Required by CPD Notice 13-002]

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 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 Subrecipient Agreement with Pima 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 to include requirements under CPD-15-11.
- v. Enter into HOME program agreements for HOME funded projects.
- vi. Monitor subrecipient and contractors 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.

- ix. Ensure that the funding decisions for the City HOME projects are authorized by the authority granted by the Mayor and Council.
- x. Adhere to the terms and conditions of the HOME Investment Partnership Intergovernmental Agreement for Subrecipient between the City of Tucson and Pima County for the period of July 1, 2016 and ending June 30, 2019.

B. Pima County will:

- i. Enter into Intergovernmental Cooperative Agreements with each willing unit of local government within the urban county, excluding the City of Tucson, whereby each unit of local government delegates the power to plan and undertake community development projects within its jurisdiction to the County that will have final responsibility for selecting all HOME projects in accordance with the approved Community Development and Housing Consolidated Plan pursuant to 24 CFR Part 91. Furthermore, each unit of local government may not participate in a HOME consortium except through Pima County during the period in which it is participating in the county's CDBG program.
- ii. Be responsible for obtaining the necessary matching funds for all of the Pima County HOME 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 to include requirements under CPD-15-11.
- v. Enter into subrecipient agreements for HOME funded projects.
- vi. Monitor contractors 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.
- ix. Abide by HOME requirements throughout the period of affordability for HOME 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 the City of Tucson and Pima County for the period of July 1, 2016 and ending June 30, 2019.

XI. ROLES AND RESPONSIBILITIES OF THE CITY AS THE LEAD ENTITY in accordance with HUD directives shall assume all responsibilities for the consortium including, but not limited to:

- A. Maintain 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. Establish, maintain and account for the HOME Investment Partnership Funds.
- C. On behalf of the consortium, facilitate the receipt of HOME funds.
- D. Within 90-days of notification of HOME funding from HUD, City will notify County regarding administrative and project costs allocations as set forth in the Subrecipient IGA.

- E. Communicate with County on HOME program notices, funding awards, monitoring visits and other HOME related activities.
- F. Assume the right and responsibility to monitor and assure compliance with all HOME requirements during the project implementation and the affordability period.
- G. Meet and discuss with County any plans to reallocate funds from any contractor 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) INCLUDE:

- A. Both parties will 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 they impact current and future projects and programs.

XIII. JOINT RESPONSIBILITIES OF THE CITY AND THE COUNTY PERTAINING TO THE COMMUNITY HOUSING AND DEVELOPMENT ORGANIZATIONS (CHDOS) SET-ASIDE REQUIREMENTS:

- A. Review and certify CHDOs for eligibility on a project by project basis in accordance with HUD's 2013 HOME Final Rule, 24 CFR Part 92.
- B. Administer and oversee CHDO projects in their respective jurisdiction.
- C. Jointly oversee and provide technical assistance as needed to ensure CHDO funded activities affirmatively furthering fair housing opportunities.
- D. Ensure environmental reviews consistent with HUD regulations and guidelines are conducted for all HOME funded projects with final review and approval by City of Tucson certifying official.

XIV. PROGRAM INCOME

Program income ("proceeds") shall be returned to the City for receipt in HUD's Integrated Disbursement and Information System (IDIS). Any program income may be reallocated as authorized by the City.

*[Remainder of this page left intentionally blank.
Signatures appear on following page.]*

XV. 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.**

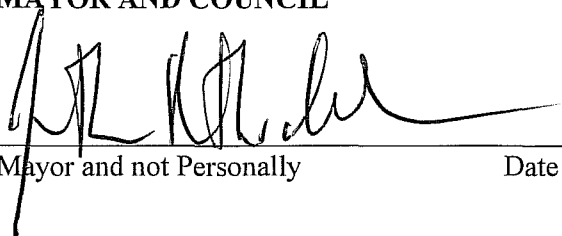
**PIMA COUNTY:
BOARD OF SUPERVISORS**

Chair, Board of Supervisors Date
and not Personally

ATTEST:


Clerk of the Board and not Personally Date

**CITY OF TUCSON:
MAYOR AND COUNCIL**



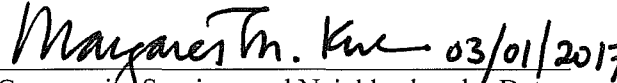
Mayor and not Personally Date

COUNTERSIGNED AND ATTESTED:

 2/16/17

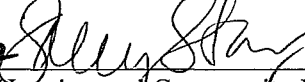
City Clerk and not Personally Date

REVIEWED AND APPROVED BY:

 03/01/2017

Community Services and Neighborhood Date
Conservation Department, Director
and not Personally

REVIEWED AND APPROVED BY:

 2/14/17

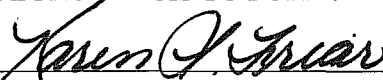
Housing and Community Development Date
Department, Director and not Personally

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


APPROVED AS TO FORM:

 2-23-17

Deputy County Attorney Date
and not Personally

CITY OF TUCSON

APPROVED AS TO FORM:



City Attorney Date
and not Personally

GENERAL CONDITIONS OF THE CONTRACT
for
SUBRECIPIENTS
City of Tucson
Housing and Community Services Department
HOME Investment Partnership Program

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Article A - Definitions

(a) **"Act"** means the HOME Investment Partnership Act at Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 et seq.

(b) **"Contract"** means the agreement entered into between the City and the Subrecipient. It includes the HOME Investment Partnership Subrecipient and Intergovernmental Agreement and all Exhibits listed therein, and these General Conditions of the Contract for HOME Investment Partnerships Program. It includes all formal changes to any of those documents.

(c) **"Contract Administrator"** means the City's Community Services staff person delegated the authority by the City to administer, and/or terminate this Contract and designated as such in the Agreement. The term includes any successor Contract Administrator and any duly authorized representative of the Contract Administrator also designated in writing. The Contract Administrator shall be deemed the authorized agent of the City in all dealings with the Subrecipient.

(d) **"Subrecipient"** means Pima County, the entity contracted to administer HOME funds as defined in 24 CFR part 92.2.

(e) **"HUD"** means the U.S. Department of Housing and Urban Development.

(f) **"HOME Program"** means the HOME Investment Partnership Program described in 24 CFR Part 92 as it currently exists and as it may be modified in the future.

(g) **"HOME Funds"** means funds made available under 24 CFR Part 92 as defined in 24 CFR 92.2 through allocations and reallocations, plus all repayments and interest or other return on investment of these funds.

(h) **"Scope of Services"** means the activities enumerated in this Contract that will develop affordable housing.

(j) **"Records"** means all pertinent books, documents, papers, accounts, reports, files, and all other records relating to the Scope of Services.

Article B - Responsibilities

B.1 Subrecipient's Responsibilities for the Scope of Services

(a) The Subrecipient shall furnish all necessary employees, materials, and equipment necessary for implementation of the Scope of Services.

(b) The Subrecipient shall be responsible for all damages to persons or property that occur as a result of the Subrecipient's fault or negligence, and shall take proper safety and health precautions to protect the public, and the property of others.

(c) To the extent permitted by law the Subrecipient shall hold the City harmless, indemnify and defend it and its officers and agents of and from any and all claims of loss, damages, death or injury sustained by any person or damage

to any property, any claim asserted by HUD regarding non-compliance with HOME Program requirements and to pay all expenses, including reasonable attorney's fees incurred or thereby arising from the performance of the Subrecipient's principals, staff, agents, or employees under the provisions of the Contract.

B.2 Conflicts of Interest

The Subrecipient shall establish safeguards to prohibit its employees, board members, advisors and agents from engaging in violations of applicable conflict of interest laws and from using their positions for any purposes that are or give the appearance of being motivated by a desire for private gain for themselves or others with whom they have family or business ties. The Subrecipient shall disclose in writing to the City any conflict of interest or potential conflict of interest immediately upon discovery.

Article C - Administrative Requirements

C.1 Order of Precedence

In the event of a conflict between these General Conditions and the HOME Program, the HOME Program shall prevail. In the event of a conflict between the Contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

C.2 Payments

(a) The City shall reimburse the Subrecipient the amount as provided in this Contract.

(b) The City shall make progress payments as the Scope of Services proceeds.

(c) Before any payment is made under this Contract, the Subrecipient shall furnish, in such detail as requested by the Contract Administrator, a breakdown of the total Contract amount showing the amount included therein for each principal category of the Scope of Services, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments. The breakdown shall be approved by the Contract Administrator and must be acceptable to the City.

(d) The Subrecipient shall submit, on forms provided by the Contract Administrator, periodic estimates showing the eligible expenses during each period based upon the approved breakdown of the Contract amount. Such estimates shall be subject to correction and revision as required. The estimates must be approved by the Contract Administrator prior to payment.

(e) The Subrecipient may not request payment until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the Subrecipient requests funds from the City.

(f) All eligible expenses covered by progress payments made shall not be construed as waiving the right of the City to require the fulfillment of all of the terms of the Contract.

(g) The City shall make the final payment due the Subrecipient under this Contract after delivery of all reports and other documents required by the Contract.

(h) Prior to making any payment, the Contract Administrator may require the Subrecipient to furnish receipts or other evidence of payment of all eligible expenses incurred by the Subrecipient, if the Contract Administrator determines such evidence is necessary to substantiate claimed expenses.

(i) In the request for payment, the Subrecipient shall include all claims of every kind and nature against the City, arising under the Contract or any covenant thereof, expressed or implied, or from any cause whatsoever, during the period preceding the date of request for payment. The purpose of this provision is to guard the City against surprise claims, to permit the City to investigate claims as they arise, and to prevent vexatious litigation of claims.

(j) Upon expiration of this Contract, the Subrecipient must transfer to the City any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

C.3 Contract Modifications

(a) Only the Contract Administrator has authority to modify any term or condition of this Contract. Any Contract modification shall be authorized in writing.

(b) The Contract Administrator may modify the Contract unilaterally for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in the City's address). All other Contract modifications shall be in the form of supplemental Contracts signed by the Subrecipient and the Contract Administrator.

C.4 Disputes

(a) "Claim", as used in this clause, means a written demand or written assertion by one of the Contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Contract terms, or other relief arising under or relating to the Contract. A claim arising under the Contract, unlike a claim relating to the Contract, is a claim that can be resolved under a Contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(b) Except for disputes arising under the clauses involving Federal, State or local regulatory agencies, all disputes arising under or relating to this Contract, including any claims for damages for the alleged breach thereof which are not disposed of by Contract, shall be resolved under this clause.

(c) All claims by the Subrecipient shall be made in writing and submitted to the Contract Administrator for a written decision.

(d) The Contract Administrator shall, within thirty (30) days after receipt of the request, decide the claim or notify the Subrecipient of the date by which the decision will be made.

(e) The Contract Administrator's decision shall be final unless the Subrecipient (1) files a written appeal to the Division Administrator of the Technical Services Division of the Community Services Department, City of Tucson, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within thirty (30) days after receipt of the Contract Administrator's decision.

(f) The Subrecipient shall proceed diligently with performance of this Contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the Contract, and comply with any decision of the Contract Administrator.

C.5 Default

(a) If the Subrecipient refuses or fails to prosecute the Scope of Services, or any separable part thereof, with the diligence that will insure its completion within the time specified in this Contract, or fails to comply with any requirements of the HOME Program, the Contract Administrator may, by written notice to the Subrecipient, terminate the Contract. The Subrecipient shall be liable for any damage to the City resulting from the Subrecipient's refusal or failure to comply with any requirements of the HOME Program.

(b) The Subrecipient's right to proceed shall not be terminated or the Subrecipient charged with damages under this clause if:

(1) The delay in completing the Scope of Services arises from unforeseeable causes beyond the control and without the fault or negligence of the Subrecipient. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the City in either its sovereign or Contractual capacity; and

(2) The Subrecipient, within thirty (30) days from the beginning of such delay (unless extended by the Contract Administrator) notifies the Contract Administrator in writing of the causes of delay. The Contract Administrator shall ascertain the facts and the extent of the delay. If, in the judgment of the Contract Administrator, the findings of fact warrant such action, time for completing the Plan shall be extended by written modification to the Contract. The findings of the Contract Administrator shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this Contract.

(c) If, after termination of the Subrecipient's right to proceed, it is determined that the Subrecipient was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the City.

C.6 Remedies

(a) If the Subrecipient is found to be in default of the Contract, and such default remains uncured for a period of sixty (60) days after notice thereof has been given by the City, the City shall be entitled to any or all of the following remedies:

- (1) Return of all HOME Funds provided that were used for ineligible expenses, plus interest at the maximum rate permitted by law.
- (2) Resort to any court having jurisdiction of the subject matter for specific performance of this Contract.
- (3) Reimbursement to the City of all reasonable attorneys' fees and all costs incurred in any judicial action resulting from the Subrecipient's breach of the Contract in which the City shall prevail.

C.7 Termination

(a) The City may terminate this Contract for the City's convenience or, in accordance with 24 CFR 85.43, for failure of the Subrecipient to comply with any term of the Contract. The City shall terminate by delivering to the Subrecipient a Notice of Termination specifying the reason therefore and the effective date of termination. Upon receipt of such notice, the Subrecipient shall immediately discontinue all services affected and deliver to the City all information, reports, papers, and other materials accumulated or generated in performing this Contract whether completed or in process.

(b) The County may terminate this Contract for the County's convenience, provided that the County gives City at least one hundred and eighty (180) days notice of termination prior to the effective date of termination

(c) In the event of termination pursuant to this Section C.7, the City shall be liable only for payment for accepted eligible expenses and binding contractual obligations before the effective date of termination. The Subrecipient shall prepare and present a claim to the City detailing reasonable and proper costs resulting from such termination, setting out in detail:

- (1) the total eligible expenses and binding Contractual obligations to date of termination less the total amount of Contract payments made to the Subrecipient;
- (2) the cost of settling and paying claims for eligible activities performed, payment for which has not been made by the City to the Subrecipient; and
- (3) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the City.

(d) The Contract Administrator will act on the Subrecipient's claim within sixty (60) days of receipt of the Subrecipient's claim.

(e) Any disputes with regard to this clause are expressly made subject to the provisions of the Disputes clause of this Contract.

C.8 Offsetting Claim

To the extent permitted by law the Subrecipient shall be liable to the City for claims brought against the City by virtue of any breach of this Contract by the Subrecipient, its officers, agents, managers or employees. The City may withhold payment of eligible operating expenses to the Subrecipient for the purpose of an offsetting claim, until such time as the full amount of damage incurred by the City is determined and paid.

C.9 Assignment of Contract

The Subrecipient shall not assign or transfer any interest in this Contract without the written concurrence of the Contract Administrator.

C.10 Retention of Rights

Neither the City's review, approval, nor payment for eligible expenses under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Subrecipient shall be and remain liable to the City in accordance with the applicable law for all damages to the City caused by the Subrecipient's negligent performance of any of the HOME Program requirements under this Contract.

C.11 Insurance

(a) The Subrecipient shall carry Comprehensive General Liability and other insurance in minimum amounts as set forth below or provide self-insurance pursuant to state law. The Subrecipient shall furnish the City Certificates of insurance and those shall state that a thirty-day written notice of prior cancellation, change, termination or expiration will be provided to the City. The Subrecipient agrees that the insurance required hereunder will be primary and that any insurance carried by the City will be excess and not contributing. Provide and maintain minimum insurance as follows:

<u>Coverage Afforded</u>	<u>Limits of Liability</u>
Worker's Compensation Employer's Liability	Statute \$100,000
Comprehensive General Liability Injury Insurance including: 1. Blanket Contractual 2. Products & Completed Operations 3. Premises-Operations 4. Personal Injury	\$1,000,000 – Bodily & Property Damage Combined Single Limit Fidelity Bonding: \$25,000 or CSD approval
Comprehensive Auto Liability Injury Insurance including: 1. Non-owned 2. Leased 3. Hired Vehicle	\$1,000,000 – Bodily & Property Damage Combined Single Limit

(b) Deductibles will be stated on the certificate of insurance and are subject to review and approval of the City.

C.12 Indemnification

To the extent permitted by law the Subrecipient agrees to indemnify, defend, and save harmless the City, its Mayor and Council, appointed boards and commissions, officials, officers, and employees, individually and collectively from all losses, claims, suits, demands, expenses, attorney's fees, or actions of any kind and nature resulting from personal injury to any person (including bodily injury and death) or damages to any property, arising or alleged to have arisen out of either (1) the Subrecipient's negligent performance of the terms of this Contract, or (2) any of the Subrecipient's negligent acts or omissions. The amount and type of insurance coverage requirements set forth in this Contract will in no way be construed as limiting the scope of indemnity in this paragraph.

C. 13 Non Discrimination

Neither party shall 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 in the course of carrying out duties pursuant to this Contract. Both parties shall comply with the provisions of Executive Orders 75-5, as amended by Executive Order 99-4, which are incorporated into this Contract by reference as if set forth in full herein.

C.14 Cancellation for Conflict of Interest

This Contract is subject to cancellation for conflict of interest pursuant to ARS.38-511, the pertinent provisions of which are incorporated into this Contract by reference.

C.15 Non-Appropriation

Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason there are not appropriate sufficient appropriated and available monies for the purpose of maintaining Subrecipient or other public entity obligations. In the event of such termination, Subrecipient shall have no further obligation to City other than for payment for reasonable services rendered prior to cancellation

C. 16 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. 121101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

C. 17 Compliance with Laws

The parties shall comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. The laws and regulations of the State of

Arizona shall govern the rights of the parties, the performance of this Agreement and any disputes hereunder. Any action relating to this Agreement shall be brought in an Arizona court in Pima County.

C. 18 Severability

If any provision of this IGA, 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 IGA which can be given effect, without the invalid provision or application and to this end the provisions of this IGA are declared to be severable.

C. 19 No Joint Venture

It is not intended by this IGA to, and nothing contained in this IGA 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 City employees, or between City 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.

C. 20 No Third Party Beneficiaries

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

Article D - HOME Requirements

The Subrecipient shall conduct all activities under this Contract in compliance with 24 CFR Part 92.

D.1 Uniform Administrative Requirements

The Subrecipient shall comply with the uniform administrative requirements as described in 24 CFR 92.505(a).

D.2 Other Program Requirements

The Subrecipient shall comply with all Federal laws and regulations described in 24 CFR Part 92, Subpart H, except that the Subrecipient will not assume the City's responsibilities for environmental review under 92.352 and the intergovernmental review process in 92.357 does not apply.

D.3 Affirmative Marketing

The Subrecipient shall comply with the affirmative marketing requirements as described in 24 CFR 92.351.

D.4 Reports and Records

The Subrecipient shall maintain and deliver to the City reports as requested by the Contract Administrator with the information necessary to meet the requirements of 24 CFR 92.508.

D.5 Written Agreements

If the Subrecipient provides HOME funds to for-profit owners or developers, nonprofit owners or developers, subrecipients, homeowners, homebuyers, tenants receiving tenant-based rental assistance, or Contractors, the Subrecipient must have a written agreement which meets the requirements of 24 CFR Part 92, as required by 24 CFR 92.504 (b).

D.6 Reversion of Assets

Upon expiration of this Contract, the Subrecipient shall transfer to the City any unobligated HOME funds on hand and any accounts receivable attributable to the use of HOME funds. County will complete projects defined in Exhibit B –Budget.

Article E – Additional Federal Requirements (92.505(a))

Contract Provisions Required by federal regulations (24 CFR Part 85.36 Procurement) and Federal Law or City Contract with HUD.

E.1 Conflicts of Interest. Based in part on federal regulations (24 CFR 85.36(b)) and agreement between the City and HUD, no employee, officer, or agent of the City (HUD grantee) shall participate in selection, or in the award or administration of a Contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

- (i) The employee, office or agent.
- (ii) Any member of his or her immediate family.
- (iii) His or her partner, or
- (iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The City's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Subrecipients, or parties to sub-agreements. The City may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the City's officers, employees, or agents or by Subrecipients or their agents. HUD may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

E.2 Interest of Members of Congress. Because of agreement between the City and HUD, no member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of the Contract or to any benefit to arise from it.

E.3 Limitation of Payments to Influence Certain Federal Transaction. The Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions Act, Section 1352 of Title 31 U.S.C., provides in part that no appropriated funds may be expended by recipient of a federal Contract, grant, loan, or cooperative agreement to pay any person, including the Subrecipient, for influencing or attempting to influence an officer or employee of Congress in connection with any of the following covered Federal actions: the awarding of any federal Contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal Contract, grant, loan, or cooperative agreement.

E.4 Restrictive Specifications. In accordance with 24 CFR 85.36(c)(3)(i) and agreements between the City and HUD, the Subrecipient shall not require the use of materials, products, or services that unduly restrict competition

E.5 Contract Adjustments. Notwithstanding any other term or condition of this Contract, any settlement or equitable adjustment due to termination, suspension or delays by the City shall be negotiated based on the cost principles stated at 48 CFR Subpart 31.2 and conform to the Contract pricing provisions of 24 CFR 85.36 (f).

E.6 Cost Price Analysis. The City shall perform a cost or price analysis as required by 24 CFR 85.36 (f) prior to the issuance of a Contract modification or amendment requested by the Subrecipient. Such a Contract modification or amendment shall be within the general scope of services covered by this Contract. The Subrecipient shall provide supporting cost information in sufficient detail to permit the City to perform the required cost or price analysis.

E.7 Disputes. In part because of HUD regulations (24 CFR 85.36(i)(1)), this Contract has administrative, contractual, or legal remedies for instances where the Subrecipient violates or breaches Contract terms, and provides for such sanctions and penalties as may be appropriate.

E.8 Termination. In part because of HUD regulations (24 CFR 85.36(i)(2)), this Contract has requirements regarding termination by the City when for cause or convenience. These include the manner by which the termination will be effected and basis for settlement.

E.9 Equal Employment Opportunity. Pursuant to Federal regulations (24 CFR 85.36(i)(3)) and Federal law, the Subrecipient shall comply with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60).

E.10 Copeland Act. Pursuant to Federal regulations (24 CFR 85.36(i)(4)) and Federal law, the Subrecipient shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

E.11 Davis-Bacon Act. The Subrecipient shall comply with the provisions of 24 CFR 92.354.

E.12 Work Hours and Safety Standards. Pursuant to Federal regulations (24 CFR 85.36(i)(6)) and Federal law, the Subrecipient shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40U.S.C. 327-330) as supplemented by the Department of Labor regulations (29 CFR Part 5).

E.13 Reporting. Pursuant to Federal regulations (24 CFR 85.36(i)(7)) and Federal law, the Subrecipient shall comply with HOME Investment Partnership Program reporting requirements as defined in 24 CFR Part 92 as it currently exists and as it may be modified in the future.

E.14 Copyrights and Rights in Data. HUD has no regulations pertaining to copyrights or rights in data as provided in 24 CFR 85.36(i)(9). It is the Subrecipient's responsibility to pay all royalties and license fees associated with its operation.

E.15 Retention and Inspection of Records. Pursuant to 24 CFR 85.26(i)(10) and (11), access shall be given by the Subrecipient to the City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Subrecipient which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for five years after the City or Subrecipient make final payments and all other pending matters are closed.

E.16 Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968. (24 CFR 92.508(7)(i)(B))

A. The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no Contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The Subrecipient agrees to send to each labor organization or representative of workers with which the Subrecipient has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Subrecipient's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The Subrecipient agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Subrecipient will not subcontract with any subcontractor where the Subrecipient has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The Subrecipient will certify that any vacant employment positions, including training positions, that are filled (1) after the Subrecipient is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Subrecipient's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted Contracts.



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MEMORANDUM

DATE: August 26, 2016

To: Roger Randolph, Tucson City Clerk
Robin Brigode, Pima County Board of Supervisor's Clerk

From: David L. Deibel, Chief Deputy City Attorney
Karen S. Friar, Deputy County Attorney

Re: Scrivener's Error in the Intergovernmental Cooperative Agreement
Between Pima County and the City of Tucson for the Consortium of the
Federal Home Program for the Federal Fiscal Years 2016, 2017 and 2018
("HOME Consortium IGA")

There are scrivener's errors in the Intergovernmental Agreement ("IGA") approved by the Mayor and Council on July 6, 2016, Resolution 22596, and by the Board of Supervisors on July 5, 2016. The error appears in the title to and some provisions of the HOME Consortium IGA. The fiscal years covered under the HOME Consortium IGA were incorrectly stated. The following are the non-substantive changes required by the U.S. Department of Housing and Urban Development:

1. The title should read "Intergovernmental Cooperative Agreement between Pima County and City of Tucson for the Consortium of the Federal Home Program for the Federal Fiscal Years 2017, 2018, and 2019."
2. Article I-PURPOSE: The first sentence should read "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 2017 through 2019."
3. Article VI – TERM: The second sentence should read "The qualification period for this agreement shall be comprised of Fiscal Years, 2017, 2018 and 2019 during which time the members will have the authority to carry out activities funded by the annual HOME program."
4. The footer of the document should also read "City-County HOME CONSORTIUM IGA FY17 – FY19"

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TO: Roger Randolph, City Clerk
SUBJECT: Scrivener's Error in the Intergovernmental Cooperative Agreement
Between Pima County and the City of Tucson for the Consortium of
the Federal Home Program for the Federal Fiscal Years 2016, 2017
and 2018 ("HOME Consortium IGA")
DATE: August 26, 2016
PAGE 2

These changes are not substantive and can be amended administratively without additional approval from the respective legislative bodies.

DLD/KSF:mg

Cc: Sally Stang, Director, City of Tucson Housing and Community Development
Margaret Kish, Director, Pima County Community Development and
Neighborhood Conservation