



BOARD OF SUPERVISORS AGENDA ITEM REPORT **CONTRACTS / AWARDS / GRANTS**

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: May 7, 2019

* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Arizona State Historic Preservation Office (SHPO), division of Arizona State Parks

***Project Title/Description:**

Programmatic Agreement between Pima County and the Arizona State Historic Preservation Office regarding HUD-Funded Program Activities

***Purpose:**

As a recipient of U.S. Department of Housing and Urban Development (HUD) grant funding, Pima County (County) is legally designated as the "Responsible Entity" pursuant to 24 C.F.R Part 58. Each County HUD-funded project constitutes a federal undertaking that requires compliance with Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) and its implementing regulations (36 C.F.R. Part 800). To streamline Section 106 compliance, Pima County is authorized (36 CFR 800.14[b]) to develop the attached Programmatic Agreement (PA) in coordination with the Arizona State Historic Preservation Office (SHPO).

***Procurement Method:**

This IGA is a non Procurement contract and not subject to Procurement rules.

***Program Goals/Predicted Outcomes:**

The County's Community Development and Neighborhood Conservation Department processes over 150 applications by County constituents annually for HUD-funded programs. Each project is individually subject to federal law that requires SHPO consultation concerning impacts to historic properties. By establishing this PA, Pima County can eliminate the requirement for SHPO consultation for over 90% of HUD-funded projects. The County is able to enter into this PA because the Office of Sustainability and Conservation is comprised of qualified historic preservation staff who meet the Secretary of the Interior's Professional Qualifications Standards as described in 36 CFR Part 61 Appendix A.

***Public Benefit:**

A Programmatic Agreement for HUD-funded programs is a mechanism built into federal law that allows the recipient of HUD monies the ability to streamline compliance requirements by eliminating the requirement for SHPO consultation thus reducing staff time and costs and which directly benefits applicants by expediting the processing of their applications for assistance.

***Metrics Available to Measure Performance:**

Expedited cultural review of HUD-funded projects without the requirement for SHPO consultation.

***Retroactive:**

No

To: COB - 4.12.19
Ver. - 1
JFS - 11
(1)

Contract / Award Information

Document Type: CTN Department Code: SUS Contract Number (i.e., 15-123): 19*180
Effective Date: 5/7/2019 Termination Date: 5/6/2029 Prior Contract Number (Synergen/CMS): _____
☐ Expense Amount: \$* No Cost ☐ Revenue Amount: \$ NA
*Funding Source(s) required: General Fund - Fund 1000, Unit 1664

Funding from General Fund? ☐ Yes ☒ No If Yes \$ 0.00 % _____
Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No
If Yes, is the Contract to a vendor or subrecipient? _____
Were insurance or indemnity clauses modified? ☐ Yes ☒ No
If Yes, attach Risk's approval.
Vendor is using a Social Security Number? ☐ Yes ☒ No
If Yes, attach the required form per Administrative Procedure 22-73.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
Amendment No.: _____ AMS Version No.: _____
Effective Date: _____ New Termination Date: _____
Prior Contract No. (Synergen/CMS): _____
☐ Expense or ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$ _____
Is there revenue included? ☐ Yes ☐ No If Yes \$ _____
*Funding Source(s) required: _____
Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards) ☐ Award ☐ Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____
Effective Date: _____ Termination Date: _____ Amendment Number: _____
☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____
*All Funding Source(s) required: _____
*Match funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____
*Match funding from other sources? ☐ Yes ☐ No If Yes \$ _____ % _____
*Funding Source: _____

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

Contact: Linda Mayo
Department: Office of Sustainability and Conservation Telephone: 724-6451
Department Director Signature/Date: [Signature] 4/9/2019
Deputy County Administrator Signature/Date: [Signature] 4/10/19
County Administrator Signature/Date: [Signature] 4/10/19
(Required for Board Agenda/Addendum Items)

Contract No: CTN-SUS-19-180 Amendment No: _____

This number must appear on all correspondence and documents pertaining to this contract

PROGRAMMATIC AGREEMENT

between

PIMA COUNTY

and the

ARIZONA STATE HISTORIC PRESERVATION OFFICE

regarding

HUD-FUNDED PROGRAM ACTIVITIES

WHEREAS, the Pima County (County) receives U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) and HOME funds that will be used for the following programs (the Programs):

HOME Investment Partnerships Program

Program provides funding for affordable housing preservation and development for low-income households, including homebuyer down-payment assistance; owner-occupied housing rehabilitation /replacement; rental and homeownership development (acquisition/rehab' & new construction); as well as, tenant-based rental assistance (TBRA) Program utilizes primarily HUD HOME Investment Partnership Program (HOME) funding as well as non-federal matching funds.

Pima County Housing Choice Voucher Program

Program provides rental assistance for very low income households through the HUD Housing Choice Voucher (HCV) Program (aka Section 8) utilizing both tenant-based vouchers and project-based vouchers. Tenant-based vouchers follow the tenant and can be used at any eligible property of tenant's choice. Project-based vouchers are assigned to a specific housing unit typically within a multi-family development under a contract agreement with the property owner. Tenants pay 30% of their adjusted income and the HUD HCV Voucher pays the balance of the rent due.

Community Development Block Grant Program

Program utilized to conduct smaller capital projects. Typical activities include funding local programs and projects that promote development of cultural, recreational and public (social) services; community facilities; capital infrastructure; health and fire safety; housing; demolition and clearance; and economic development initiatives.

Home Repair and Weatherization Programs

Program consists of both Pima County and sub-recipient administered efforts that provide various local, state and federal HUD grant assistance to qualified low-income homeowners in South Tucson, Marana, Sahuarita, Oro Valley and unincorporated Pima County. Activities range in scope, including: emergency repairs of existing systems (e.g., plumbing, roofing, water heaters, HVAC); accessibility upgrades (e.g. wheel chair ramps, grab bars); substantial home repair and weatherization upgrades; and finally, septic tank repair and replacement.

Lead Hazard Control and Healthy Homes (OLHCHH)

Program provides funding for controlling/eliminating lead-based paint hazards and for healthy home repairs in target housing units (child-occupied, pre-1978 housing), including funding to

test children for elevated lead blood levels; all activities are funded by HUD OLHCHH Grant funds and local matching funds included County CDBG funds.

Neighborhood Stabilization Program 1 and 2 (NSP)

Program provides funds for acquisition/rehabilitation of bank-owned, foreclosed homes to be rented or sold to eligible households. NSP activities can also including land acquisition, redevelopment and demolition of structures of vacant/blighted properties for affordable housing and economic development initiatives.

Homeless and Special Populations:

Program utilizes multiple local and federal grant resources to provide various housing and human services to the homeless and special populations. Typical activities include rental assistance and case management services to homeless families with children.

Pima County Brownfields & Revitalization

Program is responsible for the application, coordination and management of available grant funded brownfields, demolition and clearance; and redevelopment initiatives that provide resources to environmentally site assess, safely clean up, and sustainably reuse environmentally stigmatized areas.

WHEREAS, the Programs and proposed Program activities qualify as a federal undertaking subject to the provisions of Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108, and this Programmatic Agreement (Agreement or PA) provides the vehicle for resolving adverse effects to historic properties that may result from the implementation of these HUD Programs; and

WHEREAS, pursuant to 24 C.F.R. Part 58, the County is the Responsible Entity (RE) for compliance with Section 106 on behalf of HUD, and the County is a Signatory to this Agreement; and

WHEREAS, the Area of Potential Effects (APE) encompasses all County, Municipal and Private lands located within Pima County, AZ; and

WHEREAS, the Arizona State Historic Preservation Office (SHPO) is authorized to enter this Agreement in order to fulfill its role of advising and assisting Federal agencies in carrying out Section 106 responsibilities under Sections 101 and 106 of the NHPA and 36CFR800.2(c)(1)(i) and 800.6(b), and the SHPO is a Signatory to this Agreement; and

WHEREAS, the SHPO is authorized to advise and assist the federal and state agencies in carrying out their historic preservation responsibilities and cooperate with these agencies under A.R.S. § 41-511.04(D)(4); and

WHEREAS, the County has invited the Advisory Council on Historic Preservation (ACHP) to participate in this Agreement, and the ACHP declined to participate (March 7, 2019); and

WHEREAS, in 2008, the County adopted Board of Supervisors Policy C3.17 that establishes guidelines for the protection of archaeological and historical cultural resources. Projects completed under this PA are federal undertakings under Section 106 of the NHPA, and as such, supersede the local policy; and

WHEREAS, Pima County Administrative Procedure 34-1 requires that the Pima County Office of Sustainability and Conservation's Cultural Resources and Historic Preservation Division's staff be comprised of individuals who are permitted under the Arizona Antiquities Act (ARS § 41-841 et. seq.) and who meet the Secretary of the Interior's Standards for Archaeology and Historic Preservation qualified staff, or individuals with relevant cultural resources management experience under the supervision of permitted staff; and

WHEREAS, Pima County will consult with Indian Tribes that attach cultural or religious significance to historic properties in the APE depending on the nature and scope of individual undertakings; and

WHEREAS, the County will, for each undertaking, coordinate the National Environmental Policy Act (NEPA) public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the NHPA pursuant to 36 C.F.R. § 800.2(d)(3); and

WHEREAS, the Arizona State Museum (ASM) has been invited to participate pursuant to 36 C.F.R. § 800.6 (c)(2)(iii), as it has mandated authority and responsibilities under the Arizona Antiquities Act (AAA), ARS § 41-841 et. seq., that apply to that portion of the Undertaking on state lands in Arizona (state, county, municipality, or other political subdivision of the state), and mandated authority and responsibilities under ARS § 41-865 that apply to that portion of the Undertaking on private lands, and have been invited to participate as a concurring party to this Agreement; and

WHEREAS, if any human remains are encountered during Undertaking activities, the County is responsible for consulting with the ASM pursuant to ARS § 41-844 and ARS § 41-865 as relevant; and

WHEREAS, the County shall review all undertakings that are not identified under this PA in accordance with 36 C.F.R. §§ 800.3 through 800.7; and

NOW THEREFORE, the County and SHPO agree that the County's HUD-funded programs shall be implemented in accordance with the following stipulations in order to take into account the effect of individual undertakings on historic properties.

STIPULATIONS

Pima County shall ensure the following stipulations are carried out:

I. Professional Standards

- A. The County shall perform the rehabilitation actions at all buildings 50 years or older and in accordance with the Secretary of the Interior's Standards for Rehabilitation.
- B. The County shall ensure that any archaeological investigations that may be necessary shall be conducted by, or under the supervision of, a professional archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards for Archaeology, and under the authority of an Arizona Antiquities Act permit.

II. Conditioned Rehabilitation Actions for Buildings

Projects completed as described below do not require consultation with SHPO. Pima County shall document all activities, and include a list of properties in the annual report, as described in Stipulation VI.

A. Rehabilitation Actions

Rehabilitation actions on buildings shall be limited to the following, which pursuant to 36 CFR 800.3(a)(1) the County has determined are types of activities that do not have the potential to cause effects to historic properties, assuming such historic properties are present:

1. Systems Rehabilitation

- (a) Replacement of interior plumbing
- (b) Replacement of electrical systems
- (c) Replacement of HVAC systems including duct work
- (d) Installation of smoke detectors

2. Interior Rehabilitation

- (a) Replacement of interior flooring
- (b) Installation of insulation in ceilings and attic
- (c) Replacement of weather-stripping
- (d) Repainting interior
- (e) Replacement of kitchen cabinets, countertops, and appliances
- (f) Bathroom improvements
- (g) Door replacement
- (h) Door hardware replacement
- (i) Repair or replacement of interior wall and ceiling surfaces when required to repair or remediate damage and/or environmental hazard (eg. lead-based paint or LBP)

3. Exterior Rehabilitation

- (a) Roofing replacement
- (b) Door and window replacement of same size and done in-kind to closely match existing material and form
- (c) Abatement of hazardous materials (eg. LBP)
- (d) Door hardware replacement
- (e) Adobe or stucco repair
- (f) Repainting of exterior surfaces provided that destructive surface preparation treatments, including but not limited to water blasting, sandblasting, and chemical cleaning are not used. No painting of surfaces not previously painted.
- (g) Repair or partial replacement of porches, exterior siding, rain gutters, balustrades, stairs, or other trim when the repair or replacement is done in-kind to closely match existing material and form
- (h) Fence replacement
- (i) Foundation repair
- (j) Termite treatment
- (k) Driveway repair

B. Conditions of Implementation

The conditions of implementation shall be limited to the following:

1. Replacement of historic windows and doors on primary elevation shall match the existing windows and doors in material and size and shall closely approximate the design configuration of the existing windows and doors.
2. Re-roofing material will match the existing material in design, appearance, and scale.
3. Provided that matching the existing material is neither feasible nor prudent, pursuant to the economic objectives of the project, substitute material should closely approximate the design and appearance of the existing material.
4. Limited ground disturbing activities within the original ground disturbance footprint (not to exceed 2 feet in any direction).

C. Exemptions

1. Use of HUD funds for mobile and manufactured homes do not require SHPO review. Limited ground disturbing activities associated with related undertakings are subject to review by Pima County per Stipulation V of this Agreement.

III. Program Activities Requiring SHPO Review

- A. SHPO review is required for projects with buildings that are 50 years or older and the repair or replacement activity(ies) are not listed in Stipulation II of this Agreement.
- B. If repair or replacement activities require new construction excavation, archaeological review may be necessary; see Stipulation V of this Agreement.

IV. Reporting Requirements

For those projects that did not involve ground disturbance over the approved threshold (Stipulation V.), the County shall submit an annual report to SHPO by August 1 of each year that this Agreement is in effect that addresses the County's historic preservation actions performed for the Programs during the previous calendar year. The report shall identify the properties of the various housing units and the specific rehabilitation actions and conditions of implementation pertaining to those properties, which are limited to the items delineated below. The rehabilitation actions shall be consistent with the Programs' goals and with the interest of protecting historic properties.

V. Archaeological Review of HUD Programs Involving Ground Disturbance

Given that the types of actions listed in Stipulation I.A appear to involve minimal ground disturbance, it is unlikely that archaeological review would be needed for every action.

- A. If a proposed rehabilitation project must involve ground disturbance over more than 10 cubic feet of soil or a lateral displacement of soil more than 2 feet in any direction, the

proposed project must be reviewed for archaeological sensitivity by the County's qualified staff.

- B. When such ground disturbance is anticipated, the County's qualified staff will conduct a review of ASM's Archaeological Records Office (ARO) to determine whether existing cultural resource sites are present in the proposed project area, and whether or not the project area has been previously inventoried for cultural resources. After the review, the County's qualified staff will make a determination as to whether an archaeological survey, testing, data recovery or monitoring would be needed.
- C. The County shall initiate consultation with SHPO, Tribes, and other consulting parties following the Section 106 process pursuant to 36 CFR §§ 800.3 through 800.7 for all projects involving archaeological investigations.

VI. Annual Review of Agreement, Annual Report, Annual Meeting

- A. The parties shall evaluate the implementation and operation of this Agreement on an annual basis. There shall be an annual meeting among the parties on or near the anniversary date of the execution of this Agreement to review the progress and effectiveness of this Agreement. The County is responsible for setting up this meeting, in coordination with all the parties.
- B. The Annual Report should be submitted for review and comment prior to the meeting date so that the content of the Annual Report can be discussed at the annual meeting.

VII. Post-Review Discoveries

- A. Should a discovery of archaeological or historic materials not covered under A.R.S. § 41-841 or A.R.S. § 41-865 occur, the County will require that any cultural resources discovered during construction or other ground-disturbing activities be treated in accordance with all applicable laws. The proponent will cease all ground disturbing activities within 100 feet (30 m) of any discovery and will notify the County of the discovery within 24 hours. The County will notify the SHPO and ASM, as appropriate, of the discovery.
- B. The County will consult with all of the consulting parties on the eligibility of the newly discovered cultural resource. If eligible, the County will ensure that treatment measures are completed as necessary under the guidance of a professionally qualified archaeologist, pursuant to separate Section 106 consultation.
- C. Notification/reporting and treatment of unanticipated discoveries of human remains on County lands will comply with A.R.S. § 41-844 and A.R.S. § 41-865 on private land, as applicable. Any such discoveries will be reported to the Director of the ASM.

VIII. Dispute Resolution

- A. Should any party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the County shall consult

with such party to resolve the objection, and shall notify the SHPO and consulting parties of the objection. If the County determines that such objection cannot be resolved, the County will contact HUD and ask for HUD's involvement.

- B. HUD shall forward all documentation relevant to the dispute, including the proposed resolution, to the ACHP. The ACHP shall provide HUD with its opinion on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, HUD shall prepare a written response that takes into account any timely opinion or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. HUD will then ensure that the County proceeds according to HUD's final decision.
- C. If the ACHP does not provide comments regarding the dispute within the 30-day time period, HUD may make a final decision on the dispute and proceed accordingly. Prior to reaching a final decision, HUD shall prepare a written response that takes into account any timely comments regarding the dispute from the parties to the Agreement, and provide them and the ACHP with a copy of such written response.
- D. The responsibilities of HUD to ensure that the County carries out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.
- E. At any time during implementation of the historic preservation measures stipulated in this Agreement, should an objection pertaining to this Agreement or the effect of an undertaking on historic properties be raised by a member of the public, the County shall notify the parties to this Agreement and take the objection into account, consulting with the objector and with relevant parties to this Agreement to resolve the objection.

IX. Amendments

- A. This Agreement may be amended when such an amendment is agreed to in writing by all signatories. Any signatory to this Agreement may propose an amendment in writing to the County.
- B. The County shall consult with the signatories to this Agreement to consider the proposed amendment. If there is agreement among all signatories, the document shall be amended accordingly and the amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP. The County shall provide all parties with a copy of the executed amendment.
- C. Additions, deletions, and other revisions to the Programs subject to this Agreement can be accomplished through written agreement among the signatories. The County will initiate such written consultation with the signatories; the signatories have 30 days in which to review and comment on the proposed changes to the components of the various Programs covered by this Agreement.

X. Duration

- A. This Agreement shall remain in effect for ten (10) years beginning on the date of execution unless amended or terminated.
- B. Prior to the expiration of this Agreement, this Agreement may be extended for up to three (3) additional one (1) year terms, or terminated by mutual agreement of the parties, by execution of an amendment that accomplishes such action.

XI. Termination

- A. If any signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VII. If, within thirty (30) days (or another time period agreed to by all signatories), an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories.
- B. Once the Agreement is terminated, and prior to work continuing on the undertaking, the County must either (a) execute an Agreement pursuant to 36 CFR 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR 800.7. The County shall notify the signatories as to the course of action it will pursue.
- C. In the event the County fails to carry out the terms of the Agreement, the County shall comply with 36 CFR Part 800 for each and every housing unit rehabilitation as a separate and discrete undertaking.

XII. Confidentiality

To the maximum extent allowed by federal and state law, the County will maintain confidentiality of sensitive information regarding historic properties that could be damaged through looting or disturbance, and/or to help protect a historic property to which a Tribe attaches religious or cultural significance.

XIII. Anti-Deficiency Act

The County's obligations under this Agreement are subject to the appropriation of funds, and the stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act (31 USC 1341). The County will make reasonable and good faith efforts to secure the necessary funds to implement this Agreement in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the County's ability to implement the stipulations of this Agreement, the County will consult with the SHPO and ACHP.

XIV. Counterpart Signatures

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Execution of this Agreement by the County and the SHPO, and implementation of its terms, evidence that the County has taken into account the effects of the undertaking on historic properties and has afforded the ACHP an opportunity to comment.

PROGRAMMATIC AGREEMENT
between
PIMA COUNTY
and the
ARIZONA STATE HISTORIC PRESERVATION OFFICE
regarding
HUD-FUNDED PROGRAM ACTIVITIES

SIGNATORY

PIMA COUNTY BOARD OF SUPERVISORS

Chairman of the Board

SIGNED AND ACCEPTED THIS _____ day of _____, 2019.

ATTEST


Clerk of the Board of Supervisors

APPROVED AS TO CONTENT



Director, Pima County Office of
Sustainability and Conservation

APPROVED AS TO FORM



Deputy County Attorney
KELL OLSON

PROGRAMMATIC AGREEMENT
between
PIMA COUNTY
and the
ARIZONA STATE HISTORIC PRESERVATION OFFICE
regarding
HUD-FUNDED PROGRAM ACTIVITIES

SIGNATORY

STATE HISTORIC PRESERVATION OFFICER

Kathryn Leonard

Date

State Historic Preservation Office
1100 W Washington St
Phoenix, AZ 85007

PROGRAMMATIC AGREEMENT
between
PIMA COUNTY
and the
ARIZONA STATE HISTORIC PRESERVATION OFFICE
regarding
HUD-FUNDED PROGRAM ACTIVITIES

CONCURRING PARTY

DIRECTOR, ARIZONA STATE MUSEUM

Dr. Patrick Lyons

Date