

INTERGOVERNMENTAL COOPERATIVE AGREEMENT
BETWEEN
COUNTY OF YUMA, CITY OF SAN LUIS, CITY OF SOMERTON, CITY OF YUMA,
AND TOWN OF WELLTON
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 Yuma, a body politic and corporate of the State of Arizona, the Cities of San Luis, Somerton, and Yuma, and the Town of Wellton, municipal corporations of the State of Arizona, collectively hereinafter referred to as Units of General Local Government (“UGLG”).

WITNESSETH

WHEREAS, the UGLG may contract for services and enter into agreements with one another for joint and cooperative action pursuant to A.R.S. § 11-952, *et seq.*; and

WHEREAS, the UGLG are 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, the UGLG desire 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 Participating Jurisdiction (“PJ”); and

WHEREAS, City of Yuma is a metropolitan city as defined by Section 102(a)(4) of the Housing and Community Development Act of 1974, as amended, and authorized to undertake essential community development and housing assistance activities in its incorporated areas and 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 city, and which has entered into cooperative agreements with sub-recipients to undertake or to assist in such undertakings; and

WHEREAS, the UGLG, by forming a Consortium, will meet qualification standards established by HUD to become a 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 general local government; and

WHEREAS, the HUD Field Office approves the 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, the UGLG agree that it is desirable and in the best interest of their citizens to secure status as a PJ under the HOME Program and that such PJ shall be referred to as the Yuma County HOME Consortium; and

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

I. PURPOSE [Required by CPD Notice 13-002]

The purpose of the Agreement is to form a Consortium of the geographically contiguous units of general local government including Yuma County, the Cities of San Luis, Somerton, Yuma, and the Town of Wellton as described in the HOME Investment Partnerships (HOME) Program at 24 C.F.R. § 92.101 for the Federal Fiscal Years 2017 through 2019.

II. PROGRAM ACTIVITY [Required by CPD Notice 13-002]

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

III. REPRESENTATIVE APPOINTMENT [Required by CPD Notice 13-002]

The members mutually agree that the City of Yuma 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 Yuma County HOME Consortium.

IV. REPRESENTATIVE RESPONSIBILITIES [Required by CPD Notice 13-002]

The City of Yuma assumes overall responsibility for ensuring the Consortium's HOME Program is carried out in compliance with the requirements of the HOME Program including the requirements of the applicable Consolidated Plan as outlined at 24 C.F.R. Parts 91 & 92.

V. FAIR HOUSING [Required by CPD Notice 13-002]

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

VI. TERM [Required by CPD Notice 13-002]

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 Federal 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 for the three-year period this Agreement remains in effect.

VII. PROGRAM YEAR [Required by CPD Notice 13-002]

As required by the Consolidated Plan Final Rule at 24 C.F.R. § 91.402 (a), the Program Year for the Yuma County HOME Consortium shall be the period which begins July 1, 2017 and ends on June 30, 2020, a period of three years.

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

Any amendment or modification to this agreement, including the addition of new members or to incorporate automatic renewal or for other reasons required by HUD, must be approved in writing by all Consortium members.

IX. YUMA COUNTY HOME CONSORTIUM ADMINISTRATIVE BOARD

The allocation of HOME funds to specific projects and other necessary and required administrative functions as authorized by HUD shall be undertaken by a Yuma County HOME Consortium Administrative Board (“Board”) which shall be comprised of one representative designated by each unit of general local government.

X. ROLES AND RESPONSIBILITIES OF THE MEMBER JURISDICTIONS

A. **The Units of General Local Government**, as members of the Consortium and Parties to this Agreement, in accordance with HUD directives shall assume the following responsibilities :

1. Agree to cooperate in undertaking or to assist in undertaking housing assistance activities in compliance with the requirements of the HOME Investment Partnership Program and the Consolidated Plan.
2. Designate a qualified, knowledgeable staff person to serve on the Board as representative of each jurisdiction and to participate in the administration of the HOME program.
3. Agree to affirmatively further fair housing in their jurisdictions.

B. **The City of Yuma as the Lead Entity** in accordance with HUD directives shall assume all responsibilities for the Consortium including:

1. Maintain compliance with federal requirements for operation of the HOME program in accordance with the Regulations as set forth in 24 C.F.R. Part 92 and in accordance with the requirements related to the Consolidated Plan as set forth in 24 C.F.R. Part 91.
2. Establishment, maintenance and accounting for the HOME Investment Trust Fund Account.
3. On behalf of the Consortium, apply for HOME program funding and interact as necessary with HUD.
4. In compliance with HUD regulations and requirements, expand the scope of the City of Yuma Consolidated Plan and Analysis of Impediments to Fair Housing/ AFFH to include HOME program funding and the housing needs of the entirety of Yuma County.
5. Upon notification of HOME funding from HUD, schedule a meeting of the Yuma County HOME Consortium Administrative Board to discuss and determine how these funds will be allocated for project costs.
6. Upon agreement by the Board of any new HOME allocation, City of Yuma shall execute sub-recipient agreements on behalf of the Consortium with each UGLG designated to undertake a project and enter into sub-recipient agreements on behalf of the Consortium for projects funded to agencies other than the member UGLG.
7. Communicate with all Board members all important HOME program notices, funding awards, monitoring visits and other important activities.

8. Assume the right and responsibility to monitor all sub-recipients and assure compliance with all HOME requirements during the project implementation and the affordability period.
9. Meet and discuss with the Board any plans to reallocate funds from any sub-recipient for nonperformance or noncompliance prior to reallocating such funds.
10. Ensure HOME-funded projects comply with local codes and standards as well as federal regulations for lead-based paint hazards.
11. Provide technical assistance as needed to ensure Community Housing Development Organization (“CHDO”) funded activities comply with regulations of the HOME program and affirmatively further fair housing opportunities.
12. Ensure environmental reviews consistent with HUD regulations and guidelines are conducted for all HOME-funded projects.
13. Receive ten-percent (10%) of the annual HOME allocation for reasonable costs of overall program management, coordination, monitoring, evaluation and other allowable, necessary expenditures for undertaking the responsibilities outlined herein as Lead Entity for the Yuma County HOME Consortium in accordance with 24 C.F.R. § 92.207 Eligible Administrative and Planning Costs.

C. **The Board** in accordance with HUD directives shall assume on behalf of the Consortium responsibilities including:

1. Develop administrative policies and procedures as needed to conduct the business of the Consortium.
2. Follow in its decision making all HUD-recommended terms and conditions found in HUD published guidance and directive relative to the HOME program and other crosscutting regulations.
3. Through each UGLG representative, ensure that the funding decisions for HOME projects and other decisions of the Board are reported to each jurisdiction’s governing body as required by that governing body.
4. Obtain the necessary matching funds for all of the HOME Program projects as required by the HOME regulations.
5. Establish a funding allocation system and determine the projects to be funded each budget year, ensuring an equitable distribution among the UGLG.
6. Review and underwrite all projects that are considered for HOME funding prior to notification of award and execution of sub-recipient agreement.
7. Ensure HOME program activities are undertaken in accordance with HUD regulations and the priorities of the Consolidated Plan.
8. Exchange copies of documents that are submitted to HUD to meet the requirements of 24 CFR Part 91.
9. Meet periodically 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 Yuma County, review and discuss new HOME regulations and directives as the impact current and future projects and programs.
10. Certify CHDOs for eligibility on an annual basis.
11. Issue Requests for Proposals to CHDOs on an annual basis, or as often as jointly agreed.

XI. PROGRAM INCOME

Program income (“proceeds”) shall be returned to City of Yuma as Lead Agency for reallocation by the Consortium unless authorized in writing that all or a specific portion thereof may be retained by a sub-recipient for eligible projects as allowable by HOME Regulations.

XII. 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.

XIII. AMERICANS WITH DISABILITY ACT

Parties to the agreement 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 C.F.R. Parts 35 and 36.

XIV. 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.

XV. 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.

XVI. SEVERABILITY

If any provision 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.

XVII. INDEMNIFICATION

Each Party, as Indemnitor, agrees to indemnify, defend and hold harmless the other Parties, as Indemnitees, 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.

XVIII. 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 the Parties and the Parties' employees. The Parties shall not be liable for any debts, accounts, obligations nor other liabilities whatsoever of the other, including (without limitation) the other Parties' obligation to withhold Social Security and income taxes for itself or any of its employees.

XIX. 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 to affect the legal liability of the parties 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.

XX. 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 Yuma County Recorder. The authorizing resolutions from the governing body of each member unit of general local government that is Party to this Agreement or other evidence acceptable to HUD must be attached saying that the Chief Executive Officer or authorized official has the authority to sign the Agreement.

IN WITNESS WHEREOF, the Parties agree to affix their signatures to execute this Agreement on the dates written below:

YUMA COUNTY:

CITY OF SAN LUIS:

Chair, Board of Supervisors Date

Mayor Date

ATTEST:

ATTEST:

Clerk of the Board Date

City Clerk Date

REVIEWED BY:

REVIEWED BY:

CITY OF SOMERTON

CITY OF YUMA

Mayor Date

Mayor Date

ATTEST:

ATTEST:

City Clerk Date

City Clerk Date

REVIEWED BY:

REVIEWED BY:

TOWN OF WELLTON

Mayor Date

ATTEST:

City Clerk Date

REVIEWED BY:

ATTORNEY CERTIFICATION

The foregoing Intergovernmental Agreement between Yuma County and the Cities of of San Luis, Somerton and Yuma, and the Town of Wellton creating a Consortium for participation in the HOME Program has been reviewed, pursuant to A.R.S. § 11-952 by the undersigned Attorneys of the participating units of general local government 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.

YUMA COUNTY

CITY OF SAN LUIS

APPROVED AS TO FORM:

APPROVED AS TO FORM:

County Attorney Date

City Attorney Date

CITY OF SOMERTON

CITY OF YUMA

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney Date

City Attorney Date

TOWN OF WELLTON

APPROVED AS TO FORM:

Town Attorney Date

